



# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: February 1, 1994**

**Volume 8 • Issue 21 • Pages 2032-2118**



# **INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE**

## **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## **ADOPTION AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# NORTH CAROLINA REGISTER



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# NORTH CAROLINA REGISTER

## *Publication Schedule* (July 1993 - May 1994)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

*Note: Time is computed according to the Rules of Civil Procedure, Rule 6.*

\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.



EXECUTIVE ORDER NUMBER 36  
SMOKING POLICY COORDINATING  
COMMITTEE

WHEREAS, HB 957 was enacted by the North Carolina General Assembly as Chapter 367 of the 1993 Session Laws to establish standards to regulate smoking in public places; and

WHEREAS, there exists a need for statewide coordination of the implementation of the Act as it affects state-owned buildings.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED:**

**Section 1. Compliance Plan.**

Each Council of State and Cabinet department shall develop and implement a smoking policy compliance plan. The Secretary of Administration shall be responsible for assisting the various departments with the development and implementation of their plans.

**Section 2. Coordination.**

The Secretary of Administration shall be responsible for the following:

- (a) establishing and appointing members to the Smoking Policy Coordinating Committee;
- (b) coordinating department compliance with HB 957;
- (c) informing and advising state departments about their obligations under the Act; and
- (d) facilitating the adoption and publication of formal and informal dispute resolution policy within each department to promptly resolve complaints of departmental noncompliance with the Act.

This Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 7th day of January, 1994.

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:DLK:CGM:sgw:tlb

DJ 166-012-3

93-4168

December 27, 1993

Kenneth R. Hoyle, Sr., Esq.

County Attorney

P. O. Box 1968

Sanford, North Carolina 27331-1968

Dear Mr. Hoyle:

This refers to the redistricting of board of commissioners districts in Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on October 29, 1993; supplemental information was received on December 9, 1993.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner

Acting Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:GS:RA:emr  
DJ 166-012-3  
93-4203

January 3, 1994

David A. Holec, Esq.  
City Attorney  
P. O. Box 1388  
Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to the October 25, 1993, annexation and the designation of the annexed area to a single-member district for the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on November 1, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

**TITLE 13  
DEPARTMENT OF LABOR**

**OCCUPATIONAL SAFETY AND HEALTH**

**NOTICE OF AMENDMENT PUBLISHED IN VOLUME 8, ISSUE 18, PAGES 1744 - 1747.**

The Division of Occupational Safety and Health, North Carolina Department of Labor, is extending the period for accepting written comments on the amendment of 13 NCAC 7F .0101 regarding Permissible Exposure Limits (PELs) from January 14, 1994 to March 1, 1994. Written comments should be directed to Jill F. Cramer, NCDOL/OSH, 413 N. Salisbury Street, Raleigh, NC 27603-5942.



**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services (Medical Care Commission) intends to adopt rules cited as 10 NCAC 3B .0901 - .0903; amend 3L .0906 and .1003.*

*The proposed effective dates of these actions are:  
10 NCAC 3B .0901 - .0903 - July 1, 1994  
10 NCAC 3L .0906 and .1003 - June 1, 1994.*

*The public hearing will be conducted at 9:30 a.m. on March 11, 1994 at the Willis Building, 300 E. First Street, Greenville, N.C..*

**Reason for Proposed Action:**

**10 NCAC 3B .0901 - .0903** - To adopt formula for distribution of regional Emergency Medical Services (EMS) grant funds to providers through the 18 local regional organizations.

**10 NCAC 3L .0906 and .1003** - To clarify the Medical Care Commission's authority in deeming process for home care licensure and clarify process for annual TB screening of home care agency employees.

**Comment Procedures:** In order to allow the Commission sufficient time to review and evaluate your written comments, please submit your comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by March 3, 1994 and in no case later than March 11, 1994.

**SUBCHAPTER 3B - ADMINISTRATIVE  
PROCEDURES**

**SECTION .0900 - FORMULA FOR  
DISTRIBUTION OF  
EMERGENCY MEDICAL  
SERVICES (EMS) SYSTEM  
DEVELOPMENT GRANT FUNDS**

**.0901 FORMULA FOR ALLOCATION  
OF STATE FUNDS**

State funds shall be distributed to grantees for regional EMS system development grants with 30% of the state funds available based on population, 15% based on total area, 15% based on total land area, and 40% based on the number of coun-

ties in the grantee service area.

*Statutory Authority G.S. 143-508.*

**.0902 FORMULA FOR ALLOCATION  
OF FEDERAL FUNDS**

Federal funds allocated for distribution for regional EMS system development grants shall be distributed equally among the grant recipients.

*Statutory Authority G.S. 143-508.*

**.0903 IMPLEMENTATION OF  
FUNDING FORMULA**

Changes in available funding to grantees for the regional EMS system development grants brought about by the formulas specified in Rules .0901 and .0902 of this Section shall be implemented by applying 50% of the change in the Fiscal Year 1996 grant cycle and 50% of the change in the Fiscal Year 1997 grant cycle.

*Statutory Authority G.S. 143-508.*

**SUBCHAPTER 3L - THE LICENSING  
OF HOME HEALTH AGENCIES**

**SECTION .0900 - GENERAL**

**.0906 COMPLIANCE WITH LAWS**

(a) The home care agency shall be in compliance with all applicable federal, state and local laws, rules and regulations.

(b) Staff of the home care agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.

(c) A home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if the agency is certified or accredited by one of the accrediting bodies specified in G.S. 131E-138(g) or any accrediting body approved by the Medical Care Commission. For purposes of deeming, the North Carolina Medical Care Commission shall review and approve all name changes of accrediting bodies, additions of service review categories by accrediting bodies and the recognition of additional accrediting bodies. The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews.

(d) Nothing in this section shall prohibit the department from conducting inspections as provid-

ed for in Rule .0904 of this Section.

(e) Any agency deemed to be in compliance by virtue of accreditation by one of the specified accrediting bodies shall submit to the department a copy of its accreditation report within 30 days after the home care agency receives its report each time it is surveyed by the accrediting body. The agency shall notify the department of any action taken that affects its accreditation status, either temporarily or permanently.

Statutory Authority G.S. 131E-140.

## SECTION .1000 - ADMINISTRATION

### .1003 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with Subchapter 19A of Title 15A, North Carolina Administrative Code. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910-1030 (Bloodborne Pathogens). Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for \$38 and may be purchased with a credit card by a direct telephone call to the G.P.O. at 202/783-3238. Hands-on care employees must have an annual skin test for TB. ~~As an alternative to an annual skin test, individuals~~ Individuals, who have previously tested positive to the TB skin test, ~~may~~ shall obtain an annual verification ~~from a health department or physician that the individual is free of TB symptoms~~ that they are free of TB symptoms. This verification may be obtained, in accordance with State TB guidelines, from the local health department, a private physician or health nurse employed by the agency. A copy of the guidelines may be obtained at no cost from the North Carolina Department of Environment, Health, and Natural Resources, Tuberculosis Control Branch, PO Box 27687, Raleigh, North Carolina 27611-7687.

(b) Written policies shall be established and implemented which include orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position shall be

established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(d) Personnel records shall be established and maintained for each home care employee which include education, training, previous experience, verification of professional or paraprofessional registration or license when applicable, other qualifications, and annual performance evaluations.

Statutory Authority G.S. 131E-140.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rule cited as 10 NCAC 49B .0306.*

*The proposed effective date of this action is May 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on March 3, 1994 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.*

*Reason for Proposed Action: To bring the Division of Social Services policy in line with the Huffstetler v. DHR (103 NC App. 284, 404 S.E. 2d880 1991) decision which states that an agency must bring new evidence of an AFDC's recipient's improved condition and ensure that ineligible AFDC recipients do not continue receiving assistance because the recipient/applicant failed to provide requested medical information. This proposed amendment is being brought by Curtis Venable of Pisgah Legal Services.*

*Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Chair. Any person may request copies of this Rule by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, 919/733-3055.*

## CHAPTER 49 - AFDC

**SUBCHAPTER 49B - ELIGIBILITY  
DETERMINATION**

**SECTION .0300 - ELIGIBILITY  
FACTORS**

**.0306 DEPRIVATION**

Eligibility requirements pertaining to deprivation shall be found in 45 CFR 233.90 and this provision is hereby adopted by reference under G.S. 150B-14(c).

- (1) Death of either parent: The death of either parent shall be established through the use of the following:
  - (a) death certificate;
  - (b) written notice from the Bureau of Vital Statistics or a county health department;
  - (c) SSA or VA records;
  - (d) military records;
  - (e) cemetery records;
  - (f) hospital records;
  - (g) insurance company records;
  - (h) records of a fraternal organization;
  - (i) obituary;
  - (j) statement from an individual knowledgeable about the death.
- (2) Physical or mental incapacity of parent:
  - (a) Incapacity shall be established through the use of the following:
    - (i) a medical examination of the incapacitated parent, or a medical report from a medical facility; or
    - (ii) verification that Social Security disability benefits or SSI disability benefits are being received; or
    - (iii) a psychological examination; and
    - (iv) an examination of pertinent social factors.
  - (b) Except for cases approved because Social Security disability or SSI disability benefits are being received by the incapacitated parent, a social history shall be completed.
  - (c) The decision on incapacity shall be made by the county department of social services where possible. If not, the required information shall be forwarded to the Disability Determination Section of the Division of Social Services for evaluation.
  - (d) Cessation of incapacity shall be established by the county department of social services by the means described in Sub-items (2)(a) through (c) of this Rule. Cessation of incapacity requires

a determination that the parent's physical or mental impairments have improved to the point that the parent has regained the capability of obtaining and retaining a full-time job or caring for the parent's children.

- (e) When the assistance unit's eligibility is being redetermined, the county department shall request from the recipient the medical information necessary to make the determination of whether the incapacity continues to exist. If the recipient fails to provide the medical information necessary to redetermine the assistance unit's eligibility, the county department shall propose termination of the AFDC case by use of a timely notice. Failure of the recipient to provide the requested medical information within the 10 work day notice period, shall result in termination of AFDC benefits.
- (3) Continued absence of parent. Verification shall be accomplished as follows:
  - (a) Divorce:
    - (i) use legal documents in the applicant's or recipient's possession; or
    - (ii) use court records; or
    - (iii) contact the attorney who handled the divorce;
    - (iv) at reviews, a collateral statement shall be obtained to show that the parents are not living together.
  - (b) Formal or legal separation:
    - (i) use legal documents in the applicant's or recipient's possession; or
    - (ii) use court records; or
    - (iii) contact the attorney who handled the divorce;
    - (iv) at reviews, a collateral statement shall be obtained to show that the parents are not living together.
  - (c) Informal separation: obtain a statement from one non-relative collateral.
  - (d) Desertion or abandonment: obtain a statement from one non-relative collateral.
  - (e) Long-term treatment in a hospital, skilled nursing or domiciliary care facility: the county department shall contact the facility to obtain a statement.
  - (f) Institutionalization: the county department shall contact the institution



- to obtain a statement.
- (g) Incarceration:
    - (i) use court records; or
    - (ii) use penal institution records; or
    - (iii) obtain statement of police officer.
  - (h) A parent who is a convicted offender permitted by the court to live at home while serving an active court sentence to perform unpaid public work or unpaid community service during working hours: the county department shall contact the clerk of court to obtain statement that includes name of person convicted, date of sentence, and district of Superior Court in which the sentence was given.
  - (i) The man in the home acknowledges paternity: the county department obtains a statement from the alleged father which indicates that he is the father of the child.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.90.

# **TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0303.*

*The proposed effective date of this action is May 1, 1994.*

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person requesting that the Environmental Management Commission conduct a public hearing on this proposed amendment must submit a written request to Steve Zoufaly, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, NC 27626-0535 by February 16, 1994. Mailed written requests must be postmarked no later than February 16, 1994.*

*Reason for Proposed Action: To amend the surface quality classifications of a portion of Deep Creek in Swain County (Little Tennessee River Basin to reflect its use as a water supply).*

*Comment Procedures: All persons interested in this proposed amendment are encouraged to submit written comments. Comments must be postmarked by March 3, 1994 and submitted to Steve Zoufaly, Division of Environmental Management, Water Quality, P.O. Box 29535, Raleigh, NC 27626-0535*

## **CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

### **SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING**

#### **SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS**

#### **.0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA**

- (a) Places where the schedule may be inspected:

- (1) Clerk of Court:
  - Clay County
  - Graham County
  - Jackson County
  - Macon County
  - Swain County
  - Transylvania County
- (2) North Carolina Department of Environment, Health, and Natural Resources
  - Asheville Regional Office
  - Interchange Building
  - 59 Woodfin Place
  - Asheville, North Carolina

- (b) Unnamed Streams. Such streams entering Georgia or Tennessee will be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina will be classified "B Tr."

- (c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;
- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;

(13) May 1, 1994.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
- (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River

including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and
- (2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective May 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

*Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*



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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0524 - .0525, .0531, .0902, .0907, .0909, .0927 - .0928, .0932 - .0933, .0952, and .1002; adopt 2D .0953 - .0955.

**The** proposed effective date of this action is July 1, 1994.

**The** public hearings will be conducted at:

7:00 p.m.  
February 24, 1994  
Charlotte/Mecklenburg Government Center  
600 East 4th Street  
Charlotte, North Carolina

7:00 p.m.  
February 28, 1994  
Groundfloor Hearing Room  
Archdale Building  
512 North Salisbury Street  
Raleigh, North Carolina.

**Reason for Proposed Action:**

**15A NCAC 2D .0524 and .0525** - are being amended to replace the names of the ozone nonattainment areas with reference to the Code of Federal Register (40 CFR 81.334), also if the Director notices in the North Carolina Register, NSPS sources would have to comply with 15A NCAC 2D .0900;

**15A NCAC 2D .0531** - to extend coverage to a 1992 ozone nonattainment area that has been redesignated attainment if a violation later occurs by the Director noticing in the North Carolina Register;

**15A NCAC 2D .0902** - to extend coverage of VOC RACT rules to a 1992 ozone nonattainment area that has been redesignated attainment if a violation later occurs;

**15A NCAC 2D .0907** - to clarify the applicability of this section;

**15A NCAC 2D .0909** - to be amended to set up compliance schedules for sources in new nonattainment areas; **15A NCAC 2D .0927** - to define "breakout tank";

**15A NCAC 2D .0928** - to clarify Stage 1 control vessels, and to exempt farm tanks less than 1100

gallons and tanks used exclusively to test fuel dispensing meters;

**15A NCAC 2D .0932** - to clarify that annual testing of collection systems is required only at bulk gasoline plants and bulk gasoline terminals;

**15A NCAC 2D .0933** - to clarify requirements for external floating roof tanks of welded construction equipped with a metallic type shoe primary seal and a shoe mounted secondary seal;

**15A NCAC 2D .0952** - to extend the opportunity for using alternative controls to areas that become subject to VOC RACT rules because of the Director's notice in the NCR that the area is in violation;

**15A NCAC 2D .0953** - to adopt a requirement to install piping for Stage II vapor recovery controls at new gasoline service stations and tanks in the 1992 ozone nonattainment areas;

**15A NCAC 2D .0954** - to adopt specifications for Stage II vapor recovery controls;

**15A NCAC 2D .0955** - to adopt compliance schedules for sources brought under VOC RACT rules because of the Director's notice in the NCR;

**15A NCAC 2D .1002** - to extend inspection and maintenance to fleet vehicles operated in an I/M county and vehicles at a federal facility within an I/M county.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until March 28, 1994 to receive additional written statements. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-1489

**Fiscal Note:** These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on January 25, 1994, OSBM on January 25, 1994, N.C. League of Municipalities on January 25, 1994, and N.C. Association of County Commissioners on January 25, 1994.

CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION  
CONTROL REQUIREMENTS

SECTION .0500 - EMISSION  
CONTROL STANDARDS

.0524 NEW SOURCE PERFORMANCE  
STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in ~~Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River~~ an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) fossil fuel-fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
- (2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart E);
- (3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
- (4) nitric acid plants (40 CFR 60.1 to 60.39 and 60.70 to 60.79, Subpart G);
- (5) sulfuric acid plants (40 CFR 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
- (6) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);
- (7) petroleum refineries (40 CFR 60.1 to 60.39 and 60.100 to 60.109, Subpart J);
- (8) storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40

- CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);
- (9) secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129, Subpart L);
- (10) secondary brass and bronze ingot production plants (40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);
- (11) iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);
- (12) sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);
- (13) phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209, Subpart T);
- (14) phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);
- (15) phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);
- (16) phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);
- (17) phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);
- (18) steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);
- (19) coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);
- (20) primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);
- (21) primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);
- (22) primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);
- (23) primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);
- (24) ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269,

- Subpart Z);
- (25) kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);
- (26) grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);
- (27) lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart HH);
- (28) stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);
- (29) electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);
- (30) storage vessels for petroleum liquids, for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);
- (31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart CC);
- (32) lead-acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);
- (33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);
- (34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.409, Subpart NN);
- (35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);
- (36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and 40 CFR 60.310 to 60.319, Subpart EE);
- (37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);
- (38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);
- (39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);
- (40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);
- (41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);
- (42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);
- (43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);
- (44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart RR);
- (45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);
- (46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and 40 CFR 60.590 to 60.599, Subpart GGG);
- (47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart HHH);
- (48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);
- (49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart JJJ);
- (50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);
- (51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);
- (52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);
- (53) steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);
- (54) onshore natural gas processing: SO<sub>2</sub> emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);
- (55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);
- (56) industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);



- (57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);
- (58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);
- (59) industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);
- (60) magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);
- (61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.34 and 40 CFR 60.690 to 60.699, Subpart QQQ);
- (62) volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (40 CFR 60.1 to 60.34 and 40 CFR 60.610 to 60.618, Subpart III);
- (63) volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (40 CFR 60.1 to 60.34 and 40 CFR 60.660 to 60.668, Subpart NNN);
- (64) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.34 and 40 CFR 60.740 to 60.748, Subpart VVV);
- (65) small industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.34 and 40 CFR 60.40c to 60.48c, Subpart Dc);
- (66) municipal waste combustors (40 CFR 60.1 to 60.34 and 40 CFR 60.50a to 60.59a, Subpart Ea);
- (67) volatile organic emissions from the polymer manufacturing industry [40 CFR 60.1 to 60.34 and 40 CFR 60.560 to 60.566 except 40 CFR 60.562-2(c), Subpart DDD];
- (68) volatile organic compound emissions from the synthetic chemical manufacturing industry reactor processes [40 CFR 60.1 to 60.34 and 40 CFR 60.700 to 60.708 except 40

CFR 60.703(e), Subpart RRR].

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(c) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) Paragraphs (a) and (b) of Rule .0601 of Subchapter 2H of this Chapter are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of Rule .0601 of Subchapter 2H of this Chapter.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated new source performance standards in 40 CFR Part 60, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.*

#### **.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in ~~Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River an~~ area designated in 40 CFR 81.334 as nonattainment for ozone or in area identified in accordance with 15A NCAC 2D .0902(d) as being

in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);
- (7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);
- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);
- (11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);
- (12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);
- (13) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L);
- (14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this

Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) Paragraphs (a) and (b) of Rule 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of Rule 15A NCAC 2H .0601.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.*

#### **.0531 SOURCES IN NONATTAINMENT AREAS**

##### **(a) Applicability.**

- (1) Ozone Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated in accordance with Part (A) or (B) of this Subparagraph and which are located in:
  - (A) areas designated in 40 CFR 81.334 as nonattainment for ozone ~~and for which construction commenced after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for ozone, or~~
  - (B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:



- (i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;
- (ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

- (2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.

- (3) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment for ozone or carbon monoxide, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is

major for volatile organic compounds or nitrogen oxides is also major for ozone.);

- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and
- (5) emission of the following volatile organic compounds:

- (A) carbon monoxide,
- (B) carbon dioxide,
- (C) carbonic acid,
- (D) metallic carbides or carbonates,
- (E) ammonium carbonate,
- (F) methane,
- (G) ethane,
- (H) trichlorofluoromethane (chlorofluorocarbon 11),
- (I) dichlorodifluoromethane (chlorofluorocarbon 12),
- (J) chlorodifluoromethane (chlorofluorocarbon 22),
- (K) trifluoromethane (fluorocarbon 23),
- (L) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (M) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (N) chloropentafluoroethane (chlorofluorocarbon 115),
- (O) 1,1,1-trichloroethane (methyl chloroform),
- (P) dichloromethane (methylene chloride),
- (Q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
- (R) tetrafluoroethane (hydrofluorocarbon 134a),
- (S) dichlorofluoroethane (hydrochlorofluorocarbon 141b),
- (T) chlorodifluoroethane (hydrochlorofluorocarbon 142b),
- (U) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),
- (V) pentafluoroethane (hydrofluorocarbon 125),
- (W) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),
- (X) 1,1,1-trifluoroethane (hydrofluorocarbon 143a),
- (Y) 1,1-difluorocarbon (hydrofluorocarbon 152a), and
- (Z) perfluorocarbon compounds that fall into these classes:

- (i) cyclic, branched, or linear completely fluorinated alkanes;

- (ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
- (iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
- (iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(d) Paragraphs (a) and (b) of 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of 15A NCAC 2H .0601.

(e) To issue a permit to a source to which this Rule applies, the Director shall determine that the source will meet the following requirements:

- (1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.
- (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.
- (3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of greater than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance

(or scheduled compliance) with applicable rules in effect prior to the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G).

- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated

- with the source or modification.
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.
  - (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
  - (4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
  - (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

(j) The version of the Code of Federal Regulations incorporated in this Rule is that as of

January 1, 1989, and does not include any subsequent amendments or ~~additions~~ editions to the referenced material.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.*

## SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

### .0902 APPLICABILITY

(a) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply statewide, in accordance with Rule .0946 of this Section.

(b) Rule .0953 of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) ~~(b)~~ With the exceptions stated in Paragraph (f) ~~(d)~~ of this Rule, this Section applies, in accordance with Rules .0907 and .0946 of this Section, to all sources of volatile organic compounds located in an area designated in 40 CFR 81.334 as nonattainment for ozone.

(d) With the exceptions stated in Paragraph (f) of this Rule, this Section shall apply, in accordance with Rule .0909 of this Section, to all sources of volatile organic compounds located in any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

- (1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties;
- (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are or may be subject to the requirements of this Section as a result of the violation informing them that they are



or may be subject to the requirements of this Section. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(e) ~~(e)~~ If Mecklenburg County is designated attainment in 40 CFR 81.334, all sources in Mecklenburg County subject to a rule in this Section before July 1, 1994, shall continue to comply with all such applicable rules in this Section. If any county or part of a county to which the Section applies in accordance with Paragraph ~~(b)~~ (c) of this Rule is later designated in 40 CFR 81.334 as attainment for ozone, all sources in that county or that part of the county subject to a rule in this Section before the redesignation date shall continue to comply with all applicable rules in this Section.

(f) ~~(d)~~ This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
  - (A) The operation of the source is not an integral part of the production process; and
  - (B) The emissions from the source do not exceed 800 pounds per calendar month; and
  - (C) The exemption is approved in writing by the Director; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director.

(g) ~~(e)~~ Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rule .0524 or .0525 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### **.0907 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph ~~(b)~~ (c) of Rule .0902 of this Section on July 1, 1994, that are subject to Rules .0917 through .0924, .0929 through .0931, .0934 through .0938, .0943 through .0945, and .0947 through .0951 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946, .0953, or .0954 of this Section.

(c) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by installing emission control equipment, replacing process equipment, or modifying existing process equipment, shall adhere to the following increments of progress and schedules:

- (1) A permit application and a compliance schedule shall be submitted before January 1, 1995;
- (2) The compliance schedule shall contain the following increments of progress:
  - (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
  - (C) a date by which on-site construction or installation of the emission control and process equipment shall be completed.
- (3) Final compliance shall be achieved by May 31, 1995.

The owner or operator shall certify to the Director within 10 days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(d) The owner or operator of any source subject

to this Rule who proposes to comply with a rule in this Section by using low solvent content coating technology shall adhere to the following increments of progress and schedules:

- (1) The permit application and a compliance schedule shall be submitted before January 1, 1995.
- (2) The compliance schedule shall contain the following increments of progress:
  - (A) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
  - (B) a date by which evaluation of product quality and commercial acceptance shall be completed;
  - (C) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
  - (D) a date by which process modifications shall be initiated; and
  - (E) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.
- (3) Final compliance shall be achieved by May 1, 1995.

The owner or operator shall certify to the Director within 10 days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(e) The owner or operator of sources subject to this Rule shall, if the Director requires a test to demonstrate that compliance has been achieved, conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;
- (2) making or testing equipment or process modifications; or
- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of June 30, 1994, shall comply with all applicable rules in this Section upon start-up of the source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

#### **.0909 COMPLIANCE SCHEDULES FOR SOURCES IN NEW NONATTAINMENT AREAS**

~~(a) If the Director determines that low solvent content coating technology has been sufficiently researched and developed for a particular application, the owner or operator of a volatile organic compound emission source proposing to comply with Regulations .0917 through .0931 of this Section through application of low solvent content coatings shall achieve final compliance, determined in accordance with Regulations .0912 through .0916 and .0939 through .0942 of this Section, before October 1, 1981.~~

~~(b) With the exception stated in Regulation .0910 or .0911 of this Section or in Paragraph (d) of this Regulation, the owner or operator of an existing (as of June 30, 1980) volatile organic compound emission source proposing to employ low solvent content coating technology to comply with Regulations .0932 through .0938 of this Section shall achieve final compliance, determined in accordance with Regulations .0912 through .0916 and .0939 through .0942 of this Section, before January 1, 1983.~~

~~(c) With the exception stated in Regulation .0910 of this Section, the owner or operator of a new volatile organic compound source not in existence as of June 30, 1979, or June 30, 1980, shall comply with Regulations .0917 through .0931 or Regulations .0932 through .0938, respectively, of this Section upon source start-up.~~

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (d) of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946, .0953, or .0954 of this Section.

(c) The owner or operator of any source subject to this Rule because of the application of Paragraph (a) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment,



- replacing process equipment, or modifying existing process equipment:
- (A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;
- (B) The compliance schedule shall contain the following increments of progress:
- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
  - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;
- (C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.
- (2) if compliance is to be achieved by using low solvent content coating technology:
- (A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;
- (B) The compliance schedule shall contain the following increments:
- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
  - (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
  - (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
  - (iv) a date by which process modifications shall be initiated;
- and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;
- (C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.
- (d) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in Paragraph (c) of this Rule, whether the required increment of progress has been met.
- (e) If the Director requires a test to demonstrate that compliance has been achieved the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.
- (f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:
- (1) testing coating materials;
  - (2) making or testing equipment or process modifications; or
  - (3) adding or testing control devices.
- (g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of the date that the Director notices in the North Carolina Register in accordance with Paragraph (c) of Rule .0902 of this Section that the area is in violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.
- (h) Paragraphs (c), (d), and (f) of this Rule will not apply to sources that are in compliance with applicable rules of this Section when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices in the North Carolina Register that the area is in violation.

Statutory Authority G.S. 143-215.3(a)(1); 143-

215.107(a)(5).

# **.0927 BULK GASOLINE TERMINALS**

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Bulk gasoline terminal" means:
  - (A) breakout tanks of an interstate oil pipeline facility; or
  - (B) a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (2) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
- (3) "Breakout tank" means a tank used to:
  - (A) relieve surges in a hazardous liquid pipeline system, or
  - (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding:
  - (A) 80 milligrams per liter (4.7 grains per gallon) of gasoline loaded for control systems installed before December 1, 1992 until December 1, 1995 or the next major modification, whichever occurs first; after December 1, 1995 or at the next major modification, these control systems shall prevent emissions of volatile organic compounds from exceeding 35 milligrams per liter of gasoline loaded;
  - (B) 35 milligrams per liter for control systems installed after December 1, 1992; and that is properly installed, in good working order, and in operation. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation

certification stating the vapor control efficiency of the system in use;

- (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
- (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
- (4) All loading and vapor lines are equipped with fittings which make vapor-tight connections and which are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:

- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
- (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all new tanks storing gasoline at a bulk gasoline terminal when put into service and shall be required on all existing tanks storing gasoline at a bulk gasoline terminal by December 1, 1995:

- (1) rim-mounted secondary seals on all external and internal floating roof tanks,
- (2) gaskets on roof and deck fittings or welded seams where possible, and
- (3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the

- (2) five years following modifications; and annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved as a result of compliance with this Rule, in the ratio of at least 1.3 to 1.

(i) The owner or operators of a bulk gasoline terminal that has been permitted before December 1, 1992, to emit toxic air pollutants under 15A NCAC 2H .0610 to comply with Section .1100 of this Subchapter shall continue to adhere to all terms and conditions of the permit issued under 15A NCAC 2H .0610 and to bring the terminal into compliance with Section .1100 of this Subchapter in accordance with the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (h) of this Rule.

(j) Within one year after December 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.

(k) The owner or operator of any bulk gasoline terminal subject to this Rule that begins construction or is in operation before December 1, 1992, shall submit:

- (1) documentation that the control system meets the limit of 35 milligrams per liter required under Paragraph (c) of this Rule and that the requirements of Paragraph (g) of this Rule have been met, or
- (2) a compliance schedule by which the bulk gasoline terminal shall come into compliance by December 1, 1995, with Paragraphs (c) or (g) of this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## .0928 GASOLINE SERVICE STATIONS

### STAGE I

(a) Definitions. For the purpose of this Regulation Rule, the following definitions apply:

- (1) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
- (2) "Delivery vessel" means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources or supply to stationary storage tanks of gasoline dispensing facilities.
- (3) "Submerged fill pipe" means any fill pipe with a discharge opening which is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or which is entirely submerged when the level of the liquid is: six inches above the bottom of the tank.
  - (A) six inches above the bottom of the tank if the tank does not have a vapor recovery adaptor, or
  - (B) 12 inches above the bottom of the tank if the tank has a vapor recovery adaptor.

If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank.
- (4) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (5) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is ~~dispersed~~ dispensed.
- (6) "Gasoline dispensing facility" means any site where gasoline is ~~dispersed~~ dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (8) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month after November 15, 1990.
- (9) "Line" means pipe suitable for transferring fluids.
- (10) "Dual point system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tanks occur



through two separate openings in the storage tank and two separate hoses between the tank truck and the stationary storage tank.

(11) "Coaxial system" means the delivery of the product and recovery of vapors occur through a single coaxial fill tube, which is a tube within a tube. Product is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube.

(12) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected.

(b) Applicability. This Regulation Rule applies to all gasoline dispensing facilities and gasoline service stations and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station.

(c) Exemptions. This Regulation Rule does not apply to:

- (1) transfers made to storage tanks of gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent which have been approved by the Director;
- (2) stationary tanks with a capacity of not more than 2,000 gallons which are in place before July 1, 1979, if the tanks are equipped with a submerged fill pipe;
- (3) stationary storage tanks with a capacity of not more than 550 gallons which are installed after June 30, 1979, if tanks are equipped with a (portable) submerged fill pipe;
- (4) stationary storage tanks with a capacity of not more than 1100 gallons located on a farm and used to store gasoline for farm equipment if gasoline is delivered to the tank through a (portable) submerged fill pipe except that this exemption does not apply in ozone non-attainment areas;
- (5) ~~(4)~~ stationary storage tanks at gasoline dispensing facility or gasoline service stations where the combined annual throughput of gasoline at the facility or station does not exceed 50,000 gallons, if the tanks are equipped with

submerged fill pipes;

(6) any tanks used exclusively to test the fuel dispensing meters.

(d) With exceptions stated in Paragraph (c) of this Regulation Rule, gasoline shall not be transferred from any delivery vessel into any stationary storage tank unless:

(1) The tank is equipped with a submerged fill pipe, and the vapors displaced from the storage tank during filling are controlled by a vapor control system as described in Paragraph (e) of this Regulation Rule;

(2) The vapor control system is in good working order and is connected and operating with a vapor tight connection;

(3) The vapor control system is properly maintained and all torn or malfunctioning components or elements of design are repaired, replaced or modified;

(4) Gauges, meters, or other specified testing devices are maintained in proper working order; ~~and~~

(5) The delivery vessel and vapor collection system complies with Rule .0932 of this Section; and

(6) ~~(5)~~ The following records, as a minimum, are kept in accordance with Regulation Rule .0903 of this Section:

(A) the scheduled date for maintenance or the date that a malfunction was detected;

(B) the date the maintenance was performed or the malfunction corrected; and

(C) the component or element of design of the control system repaired, replaced, or modified.

(e) The vapor control system required by Paragraph (d) of this Regulation Rule shall include one or more of the following:

(1) a vapor-tight line from the storage tank to the delivery vessel and; ~~a system which will ensure the vapor line is connected before gasoline can be transferred into the tank; or~~

(A) for a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;

(B) for a dual point vapor recovery system, poppeted vapor recovery adaptor; or

(2) a refrigeration-condensation system or equivalent designed to recover at least

90 percent by weight of the organic compounds in the displaced vapor, ~~or~~

(f) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line except when the vapor return line is being connected or disconnected.

(g) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or is removed and upgraded.

(h) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters are to be used, and no more than one tank is to be loaded at a time.

(i) Vent lines on tanks with Stage I controls shall have pressure release valves or restrictors.

(j) (f) The vapor-laden delivery vessel:

- (1) shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport with the exception of normal pressure/vacuum venting as required by regulations of the Department of Transportation; and
- (2) if it is refilled in a nonattainment area for ozone in North Carolina, shall be refilled only at:
  - (A) bulk gasoline plants complying with Regulation Rule .0926 of this Section, or
  - (B) bulk gasoline terminals complying with Regulation Rule .0927 of this Section or Rule .0524 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## **.0932 GASOLINE TRUCK TANKS AND VAPOR COLLECTION SYSTEMS**

(a) For the purposes of this Regulation Rule, the following definitions apply:

- (1) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.
- (2) "Bulk gasoline plant" means a gasoline storage and distribution facility which has an average daily throughput of less than 20,000 gallons of gasoline and which usually receives gasoline from

bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.

- (3) "Bulk gasoline terminal" means a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (4) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 pounds per square inch or greater.
- (5) "Gasoline dispensing facility" means any site where gasoline is dispersed to motor vehicle gasoline tanks from stationary storage tanks.
- (6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.
- (7) "Truck tank" means the storage vessels of trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities and gasoline service stations.
- (8) "Truck tank vapor collection equipment" means any piping, hoses, and devices on the truck tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility or gasoline service station vapor control system or vapor balance system.
- (9) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
- (10) "Vapor collection system" means vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Regulation Rule applies to gasoline truck tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline



terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations that are equipped with vapor balance or vapor control systems.

(c) Gasoline Truck Tanks:

- (1) Gasoline truck tanks and their vapor collection systems shall be tested annually. The test procedure that shall be used is described in Regulation Rules .0940 and .0941 of this Section, and is in accordance with Regulation Rule .0912 of this Section. The gasoline truck tank shall not be used if it sustains a pressure change greater than 3.0 inches of water in five minutes when pressurized to a gauge pressure of 18 inches of water or when evacuated to a gauge pressure of 6.0 inches of water.
- (2) Each gasoline truck tank that has been certified leak tight, in accordance with Subparagraph (1) of this Paragraph, shall display a sticker near the Department of Transportation certification plate required by 49 CFR 178.340-10b. This sticker shall show the identification number of the tank and the date that the tank last passed the pressure and vacuum test.
- (3) There shall be no avoidable visible liquid leaks from any gasoline truck tank.
- (4) Any truck tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Regulation Rule .0940 of this Section, shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the tank has been certified to be leak tight in accordance with Subparagraph (1) of this Paragraph.

(d) Vapor Collection System:

- (1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the truck tank from exceeding 18 inches of water and to prevent vacuum from exceeding six inches of water.
- (2) During loading and unloading operations there shall be:
  - (A) no vapor leakage from the vapor collection system such that a reading equal to or greater than 100 percent

of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in Regulation Rule .0940 of this Section; and

(B) no avoidable visible liquid leaks.

- (3) If a leak is discovered that exceeds the limit in Part (2)(A) of this Paragraph, the vapor collection system or vapor control system (and therefore the source) shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Part (2)(A) of this Paragraph.
- (4) The owner or operator of a vapor collection system located at a bulk gasoline plant or a bulk gasoline terminal shall monitor, in accordance with Regulation Rule .0912 of this Section, the vapor collection system at least once per year. If after two complete annual checks few leaks are found, the frequency of monitoring may be decreased with the approval of the Director. If an excessive number of leaks are found, the Director may require that the frequency of monitoring be increased.

(e) The owner or operator of a source subject to this Regulation Rule shall maintain records of all certification testing and repairs. The records shall identify the gasoline truck tank, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records of certification tests shall include:

- (1) the gasoline truck tank identification number;
- (2) the initial test pressure and the time of the reading;
- (3) the final test pressure and the time of the reading;
- (4) the initial test vacuum and the time of reading;
- (5) the final test vacuum and the time of the reading, and
- (6) the date and location of the tests.

The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

Statutory Authority G.S. 143-215.3(a)(1);  
143-215.107(a)(5).

**.0933 PETROLEUM LIQUID STORAGE IN  
EXTERNAL FLOATING ROOF  
TANKS**

(a) For the purpose of this Regulation Rule, the following definitions apply:

- (1) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature ~~and/or~~ or pressure and remains liquid at standard conditions.
- (2) "Crude oil" means a naturally occurring mixture consisting of hydrocarbons ~~and/or~~ or sulfur, nitrogen ~~and/or~~ or oxygen derivatives of hydrocarbons and which is a liquid in the reservoir at standard conditions.
- (3) "Custody transfer" means the transfer of produced crude oil ~~and/or~~ or condensate, after processing ~~and/or~~ or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.
- (4) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.
- (5) "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.
- (6) "Liquid-mounted seal" means a primary seal mounted so the bottom of the seal covers the liquid surface between the tank shell and the floating roof.
- (7) "Vapor-mounted seal" means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank shell, the liquid surface, and the floating roof.
- (8) "Petroleum liquids" means crude oil, condensate, and any finished or intermediate products manufactured or

extracted in a petroleum refinery.

(b) This Regulation Rule applies to all external floating roof tanks with capacities greater than 950 barrels containing petroleum liquids whose true vapor pressure exceed 1.52 pounds per square inch absolute.

(c) This Regulation Rule does not apply to petroleum liquid storage vessels:

- (1) that have external floating roofs that have capacities less than 10,000 barrels and that are used to store produced crude oil and condensate prior to custody transfer;
- (2) that have external floating roofs and that store waxy, heavy pour crudes;
- (3) that have external floating roofs, and that contain a petroleum liquid with a true vapor pressure less than 4.0 pounds per square inch absolute and:
  - (A) The tanks are of welded construction; and
  - (B) The primary seal is a metallic-type shoe seal, a liquid-mounted foam seal, a liquid-mounted filled type seal, or any other closure device of demonstrated equivalence; or
- ~~(4) that have external floating roofs and that are of welded construction, are equipped with a metallic-type shoe primary seal, and have a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal); or~~
- (4) ~~(5)~~ that have fixed roofs with or without internal floating roofs.

(d) With the exceptions stated in Paragraph (c) of this Regulation Rule, an external floating roof tank subject to this Regulation Rule shall not be used unless:

- (1) The tank has been retrofitted with:
  - (A) a continuous secondary seal extending from the floating roof to the tank wall (a rim-mounted secondary), or
  - (B) a closure or other control device demonstrated to have an efficiency equal to or greater than that required under Part (A) of this Subparagraph; This Subparagraph shall not apply to tanks that are of welded construction with external floating roofs, are equipped with a metallic-type shoe primary seal, and have a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal);
- (2) The seal closure devices met the following requirements:

- (A) There shall be no visible holes, tears, or other openings in the seal or seal fabric;
- (B) The seal shall be intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall; and
- (C) For vapor mounted primary seals, the gap-area of gaps exceeding 0.125 inch in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter;
- (3) All openings in the external floating roof, except for automatic bleeder vents, rim space vents, and leg sleeves, are:
  - (A) provided with a projection below the liquid surface; and
  - (B) equipped with covers, seals, or lids that remain in a closed position at all times except when in actual use;
- (4) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports;
- (5) Rim vents are set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;
- (6) Any emergency roof drains are provided with slotted membrane fabric covers or equivalent covers that cover at least 90 percent of the area at the opening;
- (7) Routine visual inspections are conducted once per month;
- (8) For tanks equipped with a vapor-mounted primary seal, the secondary seal gap measurements are made annually in accordance with Paragraph (e) of this Regulation Rule; and
- (9) Records are maintained in accordance with Regulation Rule .0903 of this Section and include:
  - (A) reports of the results of inspections conducted under Subparagraph (7) and (8) of this Paragraph;
  - (B) a record of the average monthly storage temperature and the true vapor pressures or Reid vapor pressures of the petroleum liquids stored; and
  - (C) records of the throughput quantities and types of volatile petroleum liquids for each storage vessel.

(e) The secondary seal gap area is determined by measuring the length and width of the gaps around the entire circumference of the secondary seal. Only gaps equal to or greater than 0.125 inch are used in computing the gap area. The area of the gaps are accumulated to determine compliance with Part (d) (2) (C) of this Regulation Rule.

(f) Notwithstanding the definition of volatile organic compound found in Regulation Rule .0901(28) of this Section, the owner or operator of a petroleum liquid storage vessel with an external floating roof not equipped with a secondary seal or approved alternative, that contains a petroleum liquid with a true vapor pressure greater than 1.0 pounds per square inch shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 1.0 pounds per square inch.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

#### **.0952 PETITION FOR ALTERNATIVE CONTROLS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph ~~(b)~~ (c) of Rule .0902 of this Section:

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more; ~~or~~
- (2) sources covered under Rule .0946 of this Section; ~~or~~
- (3) sources covered under Rules .0953 or .0954 of this Section.

(c) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section on July 1, 1994, can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director before January 1, 1995. The petition can be made only for sources in existence or under construction on June 30,



1994.

(d) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section because of the application of Paragraph (d) of Rule .0902 of this Section can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director within six months after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone. The petition can be made only for sources in existence or under construction on the date that the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(e) ~~(d)~~ The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction which will be achieved, and the quantity and composition of volatile organic compounds which will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the

facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;

- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0907 or .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(f) ~~(e)~~ The Director and the U.S. Environmental Protection Agency (EPA) shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph ~~(d)~~ (e) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility;
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the petition.

(g) ~~(f)~~ When controls different from those specified in the appropriate emission standards in this Section are approved by the Director and the EPA, the permit shall contain a condition stating such controls.

*Statutory Authority G.S. 143-215.3(a)(1); 1143-215.68; 43-215.107(a)(5).*

#### **.0953 VAPOR RETURN PIPING FOR STAGE II VAPOR RECOVERY**

(a) Applicability. This Rule applies to any facility located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake counties

or the Dutchville Township in Granville county or that portion of Davie county that is bounded by the Yadkin River, Dutchman's Creek, NC Highway 801, Fulton Creek and back to the Yadkin River:

- (1) that is built after June 1, 1994, or
- (2) whose tanks are replaced or removed for upgrades or repairs after June 30, 1994.

When a new tank is added, the new tank shall comply with this Rule.

(b) Exemptions. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain adequate records of throughput and shall furnish these records to the Director upon request. These records shall be maintained on file for three years. The following facilities are exempt from this Rule:

- (1) any facility which dispenses 10,000 gallons of gasoline or less per calendar month;
- (2) any facility which dispenses 50,000 gallons of gasoline or less per calendar month and is an independent small business marketer of gasoline;
- (3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or
- (4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3), or (4) of this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Paragraph (e) of this Rule, and shall remain subject to these provisions even if the facilities' later operation meets the exemption requirements.

(c) Definitions. For the purpose of this Rule, the following definitions apply:

- (1) "Affected Facility" means any gasoline service station or gasoline dispensing facility subject to the requirements of this Rule.
- (2) "CARB" means the California Air Resources Board.
- (3) "Certified Stage II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.
- (4) "Facility" means any gasoline service station or gasoline dispensing facility.
- (5) "ISBM" means independent small busi-

ness marketer.

- (6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.
- (7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.
- (8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (9) "Stage II Vapor Recovery" means the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight underground storage tank or are captured and destroyed.
- (10) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month.

(d) Requirements. Affected facilities shall install the necessary piping for future installation of CARB certified Stage II vapor recovery system. The vapor piping shall extend from the tanks to the pumps. The vapor piping shall be installed in accordance with the following requirements:

- (1) Gasoline vapors shall be:
  - (A) transferred from each gasoline dispenser to the underground storage tank individually, or
  - (B) manifolded through a common header from which a single return line is connected through another manifold to all of the underground tanks.

Each vapor return pipe shall allow the transfer of gasoline vapors to the tank from which the liquid gasoline is being drawn;
- (2) The minimum inside diameter of the vapor return piping shall conform to the following:
  - (A) Two inches for one, two, or three nozzles;
  - (B) Two and one half inches for four or five nozzles;
  - (C) Three inches for six, seven, eight, or nine nozzles;
  - (D) Three and one half inches for 10, 11, or 12 nozzles; or
  - (E) Four inches for more than 12 nozzles;
- (3) All piping and fittings shall be installed in accordance with manufacturer's instructions and specifications. Metal pipe shall be minimum schedule 40

welded or seamless steel per ASTM A-53, "Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless Pipe". Fittings shall be 150 pounds cold water screwed malleable iron. Pipe and fittings shall be galvanized and pipe threads shall be zinc-coated. Nonmetallic pipes and fittings shall be U/L listed under nonmetallic primary pipes and fittings for underground flammable liquids (gas and oil equipment directory);

- (4) Each vapor return pipe shall slope towards the storage tank with a minimum grade of 1/4 inches per foot. Special care shall be taken to ensure that no low points or sags exist along the return piping;
- (5) All vapor return and vent piping shall be provided with flexible joints or swing joints at each tank connection and at the base of the vent pipe riser where it fastens to a building or other structure;
- (6) All vapor return pipe-trenching shall be compacted to 90 percent of the standard proctor according to ASTM D-698 "Laboratory Compaction Characteristics of Soil Using Standard Effort" of the area soil before the pipes are installed and back-filled with sand at least six inches below and above the piping;
- (7) The pipes shall not be driven over or in any other way crushed prior to paving or surfacing;
- (8) The vapor return piping or manifolded piping shall enter a separate opening to the tank from that connected to the vent pipe or the Stage I piping;
- (9) All vapor return piping shall be tagged at the termination point recording the function of the piping. In addition, a record of the installation of the Stage II vapor return piping shall be kept in the facility;
- (10) Vent piping shall be constructed of materials in accordance with Subparagraph (3) of this Paragraph;
- (11) All vent pipes shall be a minimum of two inches inside diameter; and
- (12) All vent pipes shall slope towards the underground storage tank with a grade of at least 1/4 inch per linear foot.

(e) Compliance Schedule. Compliance under Paragraph (d) of this Rule by the affected facility

shall coincide with the completion of the tank installation or repair. Facilities that lose their exemption under Paragraph (b) of this Rule shall comply with Rule within 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked.

(f) Testing Requirements:

- (1) Within 30 days after installation of the vapor return piping, the owner or operator of the facility shall submit reports of the following tests to be completed as described in EPA-450/3-91-022b:
  - (A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure, and
  - (B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure.
- (2) Testing shall be in accordance with Rule .0912 of this Section.
- (3) The owner or operator of the facility shall notify the Regional Office Supervisor by telephone at least five business days before back-filling the trenches and at least 10 business days before the tests given in Subparagraph (1) of this Paragraph are to be performed to allow inspection by the Division. The owner or operator may commence back-filling five days after notification has been given to the Division.
- (4) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.
- (5) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.
- (6) Where the Division conducts a test on the vapor control system, it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(g) Referenced documents:



- (1) EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (Addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U. S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851, and the cost is fifty-two dollars (\$52.00).
- (2) The American Society for Testing and Materials (ASTM) specification and test methods cited in this Rule are hereby incorporated by reference including any subsequent amendments and editions. A copy of the ASTM specification and test method can be obtained from the Air Quality Section, Division of Environmental Management, P.O. Box 29525, Raleigh, North Carolina 27626, at no cost.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.

#### **.0954 STAGE II VAPOR RECOVERY**

(a) Applicability. This Rule applies to the control of gasoline vapors at the vehicle fill-pipe during refueling operations at a facility. The vapors are captured and returned to a vapor-tight underground storage tank or are captured and destroyed. These systems must be installed at all facilities that dispense gasoline to motor vehicles unless exempted under Paragraph (b) of this Rule.

(b) Exemptions. The following gasoline dispensing facilities are exempt from this Rule:

- (1) any facility which dispenses 10,000 gallons or less of gasoline during calendar month;
- (2) any facility which dispenses 50,000

gallons or less during calendar month and is an independent small business marketer of gasoline; or

- (3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or

- (4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3) or (4) in this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Subparagraph (f) of this Rule, and shall remain subject to these provisions even if the facilities' later operation meets the exemption requirements.

(c) Proof of Eligibility. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain the following:

- (1) chronologically arranged bills of lading for receipt of gasoline shipments from the last three years, and
- (2) daily inventory of each gasoline type for each day of operation; this shall be maintained for the last three years.

These records shall be furnished to the Director upon request.

(d) Definitions. For the purpose of this Rule, the following definitions apply:

- (1) "CARB" means the California Air Resources Board.
- (2) "Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.
- (3) "Defective Equipment" means any absence, disconnection, or malfunction of a Stage II vapor recovery system component which is required by this Rule including the following:
  - (A) a vapor return line that is crimped, flattened or blocked or that has any hole or slit that allows vapors to leak out;
  - (B) a nozzle bellows that has any hole large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length;
  - (C) a nozzle face-plate or cone that is torn or missing over 25 percent of its

surface;

- (D) a nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism;
- (E) an inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this Rule; or
- (F) a failure to meet the requirements of Paragraph (g) of this Rule.
- (4) "Facility" means any gasoline service station, gasoline dispensing facility, or gasoline cargo tanker.
- (5) "ISBM" means independent small business marketer.
- (6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.
- (7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.
- (8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.
- (9) "Pressure Balanced Stage II System" means one which is not vacuum-assisted. That is, the volume of vapor in the automobile's fuel tank displaced by the incoming liquid gasoline equals the space in the underground tank created by the gasoline leaving.
- (10) "Remote Vapor Check Valve" means a check valve in the vapor return line but not located in the nozzle.
- (11) "Stage II Vapor Recovery" means to the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight storage tank or are captured and destroyed.
- (12) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month after June 30, 1994.
- (e) Stage II Requirements. No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

- (1) the transfer is made using a Certified Stage II vapor recovery system that meets the requirements of the

inspections;

- (2) all installed Stage II vapor recovery systems use coaxial vapor recovery hoses; no dual-hose designs shall be used;
- (3) all installed Stage II vapor recovery systems used are certified by CARB except that the Stage I system need not be CARB certified. In addition, no Stage II system shall employ a remote vapor check valve. Pressure balanced Stage II systems may be used; and
- (4) the underground vapor return piping satisfies the requirements of Rule .0951 of this Subchapter.

In the event that CARB revokes certification of an installed system, the owner or operator of the facility shall have six months to modify his equipment to conform with re-certification requirements unless modifications involve only the replacement of dispenser check valves, hoses, or nozzles or appurtenances to these components in which case the allowed time period is three months. This time period is defined as the period from the day that the owner or operator of the facility has been officially notified by the Director.

(f) Compliance Schedule. Affected gasoline service station or gasoline dispensing facilities shall comply with this Rule as follows:

- (1) if the gasoline service stations or gasoline dispensing facilities are subject to the requirements of this Rule in accordance with Paragraph (c) of Rule .0902 of this Section, compliance shall be achieved no later than:
  - (A) July 1, 1995, for facilities having any single monthly throughput of at least 100,000 gallons per month;
  - (B) July 1, 1996, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;
  - (C) for affected facilities owned by a single ISBM:
    - (i) July 1, 1995, for 33 percent of affected facilities;
    - (ii) July 1, 1996, for 66 percent of the affected facilities;
    - (iii) July 1, 1997, for the remainder of the affected facilities;
  - (D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or



- (E) before beginning operation for islands constructed after June 30, 1994.
- (2) if the gasoline service station or gasoline dispensing facility is subject to the requirements of this Rule in accordance with Paragraph (d) of Rule .0902 of this Section, compliance shall be achieved no later than:
- (A) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of at least 100,000 gallons per month;
- (B) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;
- (C) for affected facilities owned by a single ISBM:
- (i) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 33 percent of affected facilities;
- (ii) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 66 percent of the affected facilities;
- (iii) three years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for the remainder of the affected facilities;
- (D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or
- (E) before beginning operation for islands constructed after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone.
- (g) Testing Requirements:
- (1) Within 30 days after the commencement of operation of the Stage II system and every five years thereafter, the owner or operator of the facility shall submit reports of the following tests as described in EPA-450/3-91-022b:
- (A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure every five years;
- (B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure every five years; and
- (C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices every five years.
- If the tests have been performed within the last two years a copy of the test the owner or operator shall submitted those tests. Testing shall be in accordance with Rule .0912 of this Section.
- (2) The owner or operator shall perform daily testing and inspections as follows:
- (A) daily tests to ensure proper functioning of nozzle automatic overfill control mechanisms and flow prohibiting mechanisms, and
- (B) daily visual inspection of the nozzle bellows and face-plate.
- (3) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.
- (4) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.
- (5) Where the Air Quality Division conducts tests or upon requirement from the Director to test the vapor control system it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.
- (h) Operating Instructions and Posting:
- (1) The owner or operator of the facility shall post operating instructions for the vapor recovery system on the top one-third of the front of each gasoline



dispenser to include the following:

- (A) a clear description of how to correctly dispense gasoline with the vapor recovery nozzles.
  - (B) a warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.
  - (C) a telephone number to report problems experienced with the vapor recovery system to the owner or operator of the facility, and
  - (D) a telephone number to report problems experienced with the vapor recovery system to the Director.
- (2) The owner or operator shall provide written instructions on site as detailed in EPA-450/3-91-022b to insure that employees of the facility have an accurate understanding of the operation of the system and, in particular, when the system is malfunctioning and requires repair.

(i) Other General Requirements. The owner or operator of the facility shall conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until the system has been properly repaired.

(j) Record-keeping and Reporting. Owners or operators of the facility shall maintain records in accordance with Rule .0903 of this Section on compliance and testing.

(k) Referenced document. EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U. S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services, 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851 and the cost is fifty-two dollars (\$52.00). This price is "1991" price.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.*

#### **.0955 COMPLIANCE SCHEDULES FOR SOURCES IN NEW NONATTAINMENT AREAS**

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (d) of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946 or .0953 of this Section.

(c) The owner or operator of any source subject to this Rule because of the application of Paragraph (a) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

(I) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment;

(A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments of progress:

- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed.

(C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(2) if compliance is to be achieved by using low solvent content coating technology;

(A) A permit application and a compliance schedule shall be submitted within six months after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone;

(B) The compliance schedule shall contain the following increments:

(i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;

(ii) a date by which evaluation of product quality and commercial acceptance shall be completed;

(iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;

(iv) a date by which process modifications shall be initiated; and

(v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.

(C) Final compliance shall be achieved within three years after the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone.

(d) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in Paragraph (c) of this Rule, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may

allow the following exceptions:

(1) testing coating materials;

(2) making or testing equipment or process modifications; or

(3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of the date that the Director notices in the North Carolina Register in accordance with Paragraph (c) of Rule .0902 of this Section that the area is in violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

(h) Paragraph (c), (d), and (f) of this Rule will not apply to sources that are in compliance with applicable rules of this Section when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices in the North Carolina Register that the area is in violation.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).*

## SECTION .1000 - MOTOR VEHICLE EMISSION CONTROL STANDARDS

### .1002 APPLICABILITY

(a) This Section is applicable to all 1975 and later gasoline-powered motor vehicles, except motorcycles and excluding the current model year, that are:

(1) required to be registered by the North Carolina Division of Motor Vehicles in the counties listed in Paragraph (b) of this Rule;

(2) part of a fleet primarily operated within the counties listed in Paragraph (b) of this Rule; or

(3) operated on a federal installation located in a county listed in Paragraph (b) of this Rule and that meet the requirements of 40 CFR 51.356(a)(4).

(b) The emission standards will become effective in the following counties on the dates indicated below:

<u>County</u>	<u>Effective Date</u>
Mecklenburg	April 1, 1991
Wake	April 1, 1991
Forsyth	July 1, 1991

Guilford	July 1, 1991
Durham	July 1, 1992
Gaston	July 1, 1992
Cabarrus	January 1, 1993
Orange	July 1, 1993
Union	July 1, 1993

(c) If the United States Environmental Protection Agency does not redesignate Davidson, Forsyth, and Guilford Counties and the portion of Davie County that is nonattainment for ozone as attainment areas for ozone, then emission standards and requirements of this Section shall become effective in Davidson and Randolph Counties six months after formal notification by EPA.

*Statutory Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7).*

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNH - NCWTFB Board of Certification intends to amend rule cited as 15A NCAC 18D .0206.

**The** proposed effective date of this action is May 1, 1994.

**The** public hearing will be conducted at 9:30 a.m. on March 8, 1994 at the Jane S. McKimmon Center, NC State University, Western Boulevard, Raleigh, NC.

**Reason for Proposed Action:** To establish mandatory certification for distribution operators.

**Comment Procedures:** Any person requiring information may contact Mr. John C. McFadyen, Post Office Box 27687, Raleigh, North Carolina 27611-7687, Telephone (919) 715-3225 or 733-2321. Written comments must be submitted to the above address no later than March 8, 1994. Notice of an oral presentation may be given to Mr. John C. McFadyen at the above address prior to the public hearing.

**Fiscal Note:** This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on

January 4, 1994, OSBM on January 4, 1994, N.C. League of Municipalities on January 4, 1994, and N.C. Association of County Commissioners on January 4, 1994.

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

#### SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

##### .0206 CERTIFIED OPERATOR REQUIRED

(a) There shall be an operator in responsible charge for each water treatment facility that adds chemicals to the water, has approved plans for adding chemicals to the water, or has equipment installed for adding chemicals to the water. The operator in responsible charge shall possess a valid certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated except for purchase water systems which add only a disinfectant to the water in which case the operator in responsible charge shall hold a surface water, well water or distribution system certification equivalent to or exceeding the classification of the facility without respect to the original source of the water.

(b) There shall be an operator holding at least a Grade C surface certification or above assigned to be on duty on the premises when a Class A, Class B, or Class C surface water treatment facility is treating water. In no case shall there be a substitute non-certified operator for more than seven days. Implementation of this requirement is subject to the following provisions:

- (1) Upon the effective date of this rule, each affected facility shall have two years to come into compliance;
- (2) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
- (3) Upon such vacancy the facility shall have 90 days to fill the position with a certified Grade C or above operator or shall have pending approval for a temporary certification for the operator;
- (4) Within 18 months of vacancy the facility shall have a certified Grade C or



vacancy.

(c) There shall be an operator in responsible charge for the distribution portion of the community public water systems designated in Subparagraphs (c)(1), (2) and (3) of this Rule. This operator shall possess a valid certificate issued by the Board equivalent to or exceeding the distribution classification of the facility for which he or she is designated.

- (1) No later than July 1, 1997 all community public water systems serving greater than 3,300 service connections shall have a certified distribution operator in responsible charge of the distribution portion of the system.
- (2) No later than July 1, 1998 all community public water systems serving greater than 1,000 service connections shall have a certified distribution operator in responsible charge of the distribution portion of the system.
- (3) No later than July 1, 1999 all community public water systems serving greater than 100 service connections shall have a certified distribution operator in responsible charge of the distribution portion of the system.

Statutory Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32.

## TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6B .0007; 6C .0310, .0401 and 6G .0302.

*The proposed effective date of this action is July 1, 1994.*

*The public hearing will be conducted at:*

16 NCAC 6B .0007 @ 9:30 a.m.  
16 NCAC 6C .0310 @ 10:00 a.m.  
16 NCAC 6C .0401 @ 10:30 a.m.  
16 NCAC 6G .0302 @ 11:00 a.m. on  
March 3, 1994

at the  
Education Building  
7th Floor Board Room  
301 N. Wilmington Street  
Raleigh, NC 27601-2825.

*Reason for Proposed Action:*

16 NCAC 6B .0007 - Allows Department greater flexibility to use resources where needed.  
16 NCAC 6C .0310 - Establishes highest scores possible within validation study.  
16 NCAC 6C .0401 - Conforms rule to recent change in G.S. 115C-302.  
16 NCAC 6G .0302 - Conforms rule to recent change in G.S. 115C-238.

*Comment Procedures:* Any interested person may present views in writing prior to or at the hearing or orally at the hearing.

## CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

### SUBCHAPTER 6B - STUDENT TRANSPORTATION SYSTEM

#### .0007 SUPERVISORY AND SAFETY PRACTICES

The Department may evaluate ~~evaluates annually~~ the transportation program of ~~each~~ any LEA, including the supervisory and safety practices. It may also ~~makes~~ make recommendations to the LEA as it considers necessary.

Statutory Authority G.S. 115C-240(a).

**SUBCHAPTER 6C - PERSONNEL**

**SECTION .0300 - CERTIFICATION**

**.0310 STANDARD EXAMINATIONS**

- (a) The NTE are the standard examinations required for initial certification.
- (1) For formal admission into an approved teacher education program, a person must score at least 646 on the Communication Skills Test and 645 on the General Knowledge Test. These requirements apply to person who have not passed these tests by January 1, 1990. These requirements do not apply to persons whose specialty area is school social work, school counseling or school psychology.
- (2) All applicants for initial certification must score at least 649 on the Professional Knowledge Test.
- (3) ~~In~~ Effective July 1, 1994, in addition to the Professional Knowledge Test, each applicant for initial certification must meet minimum teaching area scores as follows:

<u>Specialty Area</u>	<u>eff. 7-1-93</u>	<u>eff. 7-1-94</u>
(A) Agriculture		—
(B) Art Education	530	
(C) Audiology	590	
(D) Biology	540	
(E) Biology and General Science	570	
(F) Business Education	<del>560</del> 580	
(G) Chemistry	490	
(H) Chemistry, Physics and General Science	<del>530</del> 550	550
(I) Early Childhood Education	530	
(J) Earth/Space Science	<del>500</del> 530	
(K) Education in the Elementary School	540	
(L) Education of the Mentally Retarded	<del>540</del> 580	
(M) Educational Leadership: Administration and Supervision	590	
(N) English Language and Literature	520	
(O) English Language and Literature (Middle Grades Language Arts)	460	
(P) French	540	
(Q) German	<del>500</del> 540	
(R) Health Education	<del>580</del> 640	
(S) Home Economics Education	540	
(T) Technology Education	<del>570</del> 580	
(U) Introduction to the Teaching of Reading	540	
(V) Library Media Specialist	<del>590</del> 610	
(W) Marketing Education	<del>660</del> 690	
(X) Mathematics	<del>520</del> 540	540
(Y) Mathematics (Middle Grades Mathematics)	<del>540</del> 530	
(Z) Music Education	550	
(AA) Physical Education	570	
(BB) Physics	510	
(CC) Reading Specialist	570	
(DD) School Guidance and Counseling	570	
(EE) School Psychologist	620	
(FF) Social Studies	540	
(GG) Social Studies (Middle Grades Social Studies)	500	
(HH) Spanish	520	
(II) Special Education (Cross Categorical)	510	
(JJ) Speech Communication	<del>530</del> 560	
(KK) Speech-Language Pathology	550	

(LL) Teaching Emotionally Disturbed Students	620	680
(MM) Teaching English as a Second Language		520
(NN) Teaching Hearing Impaired Students	620	650
(OO) Teaching Learning Disabled Students	540	610
(PP) Teaching Visually Handicapped Students		550

- (4) If no teaching area score is possible under Paragraph (a)(3) of this Rule, the Professional Knowledge score satisfies the NTE requirement.
- (5) Based on the special nature of the preparation for certification. School Social Workers are excluded from NTE regulations and School Psychologists are required to take only the Area examination for School Psychologists.

(b) Instead of the NTE scores an applicant, except a North Carolina approved program graduate at the Class A level, may be certified on the basis of the Graduate Record Examinations with minimum scores of 380 on the Verbal Ability, 410 on the Quantitative Ability, and 380 on the Analytical Ability examinations.

*Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, Sec. 5.*

## SECTION .0400 - LEAVE

### .0401 VACATION LEAVE

(a) All full-time or part-time permanent public school employees who are working or on paid leave for at least one-half of the calendar days in a month earn vacation leave, based on length of state service in North Carolina.

(b) A part-time permanent employee in a budgeted position earns vacation leave on a pro rata basis.

(c) Local boards of education may choose to record leave earned in hours. If leave is recorded in hours, the leave earned as indicated in this Paragraph will be multiplied times the regular number of hours worked per day. Employees earn vacation leave as follows:

<u>Years of State Service</u>	<u>Days Per Month of Employment</u>
Less than 2 yrs.	1.00
2 but less than 5 yrs.	1.15
5 but less than 10 yrs.	1.40
10 but less than 15 yrs.	1.65
15 but less than 20 yrs.	1.90
20 yrs. or more	2.15

(d) LEAs credit state service for full-time or part-time permanent employment figured on the same basis as for longevity pay. The LEA must establish the anniversary date for each employee on the basis of the employee's state service.

(e) The LEA may advance vacation leave to an employee.

(f) The LEA transfers unused vacation leave when an employee transfers between LEAs. An employee may have leave transferred to or from a state agency or institution, community college or

technical institute, a position subject to the State Personnel Act in a local mental health, public health, social services or emergency management agency, if the receiving agency is willing to accept the leave; otherwise, the employee will be paid in a lump sum for accumulated leave not to exceed 30 workdays or 240 hours, according to the earning rate.

(g) Leave payment at separation is subject to the following:

- (1) An employee who is overdrawn on leave when he or she separates will have the excess leave corrected through a deduction from the final salary check.
- (2) Payment for leave may be made on the regular payroll or on a supplemental payroll. The LEA makes payment from the same source of funds and in the same proportion as the employee's salary is paid.
- (3) Terminal leave payment is subject to the same deductions as salary, including retirement.
- (4) The receipt of lump sum leave payment and retirement benefit is not dual compensation.
- (5) The LEA makes payment for unpaid salary, terminal leave and travel of a deceased employee to the personal representative of the deceased employee, or if there is no personal representative, to the Clerk of Superior Court of the county in which the employee resided.

(h) Each LEA shall maintain leave records for all employees. LEAs must inform employees of their leave balances at least once a year. LEAs must retain leave records for separated employees for at least five years from the date of separation.



(i) Leave must be taken in one-half days, whole days, or hours as determined for earning purposes by the local board.

(j) ~~Instructional personnel and school bus drivers may not take vacation leave on days when students are scheduled to be in attendance. These persons may take vacation leave instead of sick leave on days when students are not scheduled to attend.~~ Instructional personnel who require a substitute may take vacation leave only on days when students are not in attendance. Instructional personnel who do not require a substitute may take vacation leave on any day school is in session. LEAs may designate specific scheduled workdays for required attendance as long as employees have an opportunity to take annual leave earned during the school year. Employees may charge leave taken only to scheduled teacher workdays and the ten vacation leave days scheduled in the school calendar.

(k) Other employees may take vacation leave instead of sick leave. These employees must have an opportunity to take annual leave earned in the school year.

*Statutory Authority G.S. 115C-272; 115C-285; 115C-302; 115C-316.*

## SUBCHAPTER 6G - EDUCATION AGENCY RELATIONS

### SECTION .0300 - PERFORMANCE- BASED ACCOUNTABILITY PROGRAM

#### .0302 DIFFERENTIATED PAY

(a) No LEA may adopt a differentiated pay plan that includes an across-the-board salary supplement for all ~~certified~~ employees.

(b) After an LEA that uses the school-based performance model for differentiated pay attains local school goals, the local board of education, upon recommendation of the principal and superintendent, shall determine which ~~certified~~ staff members contributed to the attainment of those goals. The LEA will then distribute differentiated pay bonuses to those employees. A school-based committee that participates in the review of bonus distribution serves only in an advisory role to the principal, who bears the final responsibility for evaluating the performance of ~~certified~~ staff and deciding whom to recommend to the superintendent for bonus distribution.

(c) ~~A school-based differentiated pay plan must include, at a minimum, all full-time certified staff in the participating schools.~~

*Statutory Authority G.S. 115C-238.1; 115C-238.3; 115C-238.4.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21 NCAC 14N .0201, .0301, .0401 and .0501.*

*The proposed effective date of this action is May 1, 1994.*

*Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Anyone wishing to demand a public hearing may contact Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609, (919) 850-2793. This demand must be in writing and received by March 17, 1994.*

*Reason for Proposed Action: The law part of the theory portion of the examinations does not aid the applicant in his/her knowledge of cosmetology, and in some cases, this alone causes an applicant to fail the examination.*

*Comment Procedures: Written comments regarding these rules should be mailed or delivered to Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609. Comments must be received no later than March 1, 1994.*

## CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

### SUBCHAPTER 14N - EXAMINATIONS

#### SECTION .0200 - COSMETOLOGIST EXAM

##### .0201 EXAMINATION - THEORY SECTION

(a) The theory section of the cosmetologist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of cosmetic art, including hairdressing, manicuring and pedicuring, facial massage, and

sanitation. ~~The theory section also covers North Carolina laws governing the practice of cosmetic art.~~

(b) The candidate shall have two ~~and one-half~~ hours to complete the theory section of the cosmetologist examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

### SECTION .0300 - MANICURIST EXAMINATION

#### .0301 EXAMINATION - THEORY SECTION

(a) The theory section of the manicurist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of the art of manicuring, pedicuring and sanitation. ~~The theory section will also cover North Carolina laws governing the practice of cosmetic art.~~

(b) The candidate shall have two ~~and one-half~~ hours to complete the theory section of the manicurist examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

### SECTION .0400 - COSMETOLOGIST TEACHER EXAMINATION

#### .0401 EXAMINATION - THEORY SECTION

(a) The theory section of the cosmetology teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation. ~~The theory section will also cover North Carolina laws governing the practice of cosmetic art.~~

(b) The candidate shall have two ~~and one-half~~ hours to complete the theory section of the examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

### SECTION .0500 - MANICURIST TEACHER EXAMINATION

#### .0501 EXAMINATION - THEORY SECTION

(a) The theory section of the manicurist teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology, which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation. ~~The theory section will also cover North Carolina laws governing the practice of cosmetic art.~~

(b) The candidate shall have two ~~and one-half~~ hours to complete the theory section of the examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board for Licensing of Geologists intends to amend rule cited as 21 NCAC 21 .0107.*

*The proposed effective date of this action is May 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on March 4, 1994 at the NC Board for Licensing of Geologists, 3733 Benson Drive, Raleigh, NC 27609.*

*Reason for Proposed Action: The upper limit on examination fees is being set to allow the Board to utilize a national examination which now costs \$350.00.*

*Comment Procedures: Direct comments to North Carolina Board for Licensing of Geologists, 3733 Benson Drive, Raleigh, NC 27609, (919) 850-9669, by March 3, 1994 or at the public hearing.*

CHAPTER 21 - BOARD OF GEOLOGISTS

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

**.0107 FEES**

(a) Completed application forms must be accompanied by the prescribed fee. Application fees will not be refunded regardless of Board approval or disapproval of the application. Prescribed fees shall be not more than:

(1)	application forms for licensing as a geologist, including a copy of the Geologists Licensing Act and Rules: . . . . .	\$ 5.00
(2)	application for license: . . . . .	\$ 50.00
(3)	examination: . . . . .	<del>\$100.00</del> \$ 350.00
(4)	application for license by comity: . . . . .	\$ 50.00
(5)	biennial renewal of license: . . . . .	\$ 70.00
(6)	<del>biennial renewal of license of N. C. resident geologists practicing less than 15 days per year: . . . . .</del>	<del>\$ 30.00</del>
(6)	(7) replacement of license: . . . . .	\$ 10.00
(7)	(8) application for reinstatement of license: . . . . .	\$ 50.00
(8)	(9) licensed geologist stamp and seal: cost plus . . . . .	\$ 5.00
(9)	(10) application for corporate registration: . . . . .	\$ 50.00
(10)	(11) annual renewal of certificate of registration for corporations . . . . .	\$ 25.00
(11)	(12) registered geological corporation stamp and seal: cost plus: . . . . .	\$ 5.00

(b) All licenses will expire biennially on July 1. Biennial renewal fees received after July 1 and before September 1 of the year due shall be subject to the assessment of a late payment penalty of twenty-five dollars (\$25.00). All certificates of registration for corporations will expire annually on July 1. Annual renewal fees for certificates of registration for corporations received after August 1 and before December 31 shall be subject to a late payment penalty of twenty-five dollars (\$25.00).

(c) Licenses that have not been renewed by September 1st may only be renewed by filing a reinstatement application and submitting a reinstatement fee.

(d) Licenses that have been suspended under G.S. 89E-19 may be reinstated by filing a reinstatement application and paying the reinstatement fee.

*Statutory Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E-13; 89E-19.*



# LIST OF RULES CODIFIED

*The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.*

## Key:

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Corr</i>	=	<i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

## NORTH CAROLINA ADMINISTRATIVE CODE

### NOVEMBER & DECEMBER 93

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	20	State Treasurer
2	Agriculture	21	Occupational Licensing Boards
4	Commerce	14 -	Cosmetic Art Examiners
5	Correction	16 -	Dental Examiners
10	Human Resources	19 -	Electrolysis
11	Insurance	34 -	Mortuary Science
12	Justice	40 -	Opticians
13	Labor	54 -	Practicing Psychologists
15A	Environment, Health, and Natural Resources	60 -	Refrigeration Examiners
17	Revenue	65 -	Therapeutic Recreation
19A	Transportation	25	Personnel

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	35	.0101		✓		✓		12/01/93	
			.0102		✓				12/01/93	
			.0103		✓		✓		12/01/93	
			.0201		✓				12/01/93	
			.0202		✓		✓		12/01/93	
1	NCAC	35	.0203							
recodified from 1	NCAC	35	.0301						12/01/93	
			.0203		✓				12/01/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	35	.0204							
recodified from										
1	NCAC	35	.0302						12/01/93	
			.0204		✓				12/01/93	
1	NCAC	35	.0301							
recodified to										
1	NCAC	35	.0203						12/01/93	
1	NCAC	35	.0301							
recodified from										
1	NCAC	35	.0401						12/01/93	
			.0301		✓				12/01/93	
1	NCAC	35	.0302							
recodified to										
1	NCAC	35	.0204						12/01/93	
1	NCAC	35	.0302							
recodified from										
1	NCAC	35	.0402						12/01/93	
			.0302		✓		✓		12/01/93	
1	NCAC	35	.0304							
recodified from										
1	NCAC	35	.0403						12/01/93	
			.0304		✓				12/01/93	
1	NCAC	35	.0305							
recodified from										
1	NCAC	35	.0404						12/01/93	
			.0305		✓				12/01/93	
1	NCAC	35	.0306							
recodified from										
1	NCAC	35	.0405						12/01/93	
			.0306		✓		✓		12/01/93	
1	NCAC	35	.0307							
recodified from										
1	NCAC	35	.0406						12/01/93	
			.0307		✓		✓		12/01/93	
1	NCAC	35	.0308							
recodified from										
1	NCAC	35	.0407						12/01/93	
			.0308		✓				12/01/93	
1	NCAC	35	.0401							
recodified to										
1	NCAC	35	.0301						12/01/93	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1	NCAC	35	.0402							
recodified to										
1	NCAC	35	.0302						12/01/93	
1	NCAC	35	.0403							
recodified to										
1	NCAC	35	.0304						12/01/93	
1	NCAC	35	.0404							
recodified to										
1	NCAC	35	.0305						12/01/93	
1	NCAC	35	.0405							
recodified to										
1	NCAC	35	.0306						12/01/93	
1	NCAC	35	.0406							
recodified to										
1	NCAC	35	.0307						12/01/93	
1	NCAC	35	.0407							
recodified to										
1	NCAC	35	.0308						12/01/93	
2	NCAC	38	.0701		✓				01/01/94	
		48A	.1005		✓		✓		01/01/94	
		52B	.0210		✓				01/01/94	
4	NCAC	2R	.1502					✓		
		2S	.0612		✓				02/01/94	
			.0613	✓					02/01/94	
			.0614 - .0615	✓			✓		02/01/94	
			.0616	✓					02/01/94	
		5C	.0308	✓					12/01/93	
		13A	.0103 - .0104			✓			01/01/94	
		13E	.0901		✓				01/01/94	
5	NCAC	2B	.0102 - .0105			✓			01/01/94	
			.0107			✓			01/01/94	
			.0201 - .0206			✓			01/01/94	
			.0301 - .0302			✓			01/01/94	
			.0304 - .0305			✓			01/01/94	
			.0501 - .0502			✓			01/01/94	
		2C	.0101 - .0105			✓			01/01/94	
			.0201 - .0203			✓			01/01/94	
			.0301 - .0303			✓			01/01/94	



*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
5	NCAC	2C	.0401 - .0405			✓			01/01/94	
			.0501 - .0504			✓			01/01/94	
			.0801 - .0803			✓			01/01/94	
			.0902 - .0903			✓			01/01/94	
			.1001 - .1007			✓			01/01/94	
			.1101 - .1103			✓			01/01/94	
	2D		.0101 - .0103			✓			01/01/94	
			.0201 - .0204			✓			01/01/94	
			.0401 - .0402			✓			01/01/94	
			.0502			✓			01/01/94	
			.0601 - .0602			✓			01/01/94	
			.0704			✓			01/01/94	
			.0801			✓			01/01/94	
			.0803 - .0804			✓			01/01/94	
	2E		.0229			✓			01/01/94	
			.0235			✓			01/01/94	
			.0702 - .0708			✓			01/01/94	
			.1001 - .1004			✓			01/01/94	
			.1006			✓			01/01/94	
			.1101 - .1103			✓			01/01/94	
			.1302 - .1303			✓			01/01/94	
			.1306			✓			01/01/94	
			.1405			✓			01/01/94	
	2F		.0101			✓			01/01/94	
			.0201 - .0203			✓			01/01/94	
			.0205 - .0206			✓			01/01/94	
			.0301 - .0302			✓			01/01/94	
			.0404			✓			01/01/94	
			.0501 - .0503			✓			01/01/94	
			.0505			✓			01/01/94	
			.0601 - .0605			✓			01/01/94	
			.1508			✓			01/01/94	
			.2002			✓			01/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
5	NCAC	2F	.2101			✓			01/01/94	
			.2201 - .2204			✓			01/01/94	
			.2301 - .2303			✓			01/01/94	
			.2502 - .2503			✓			01/01/94	
			.2603 - .2604			✓			01/01/94	
	2G		.0101 - .0105			✓			01/01/94	
			.0201 - .0204			✓			01/01/94	
			.0207			✓			01/01/94	
			.0209			✓			01/01/94	
			.0301 - .0303			✓			01/01/94	
			.0305			✓			01/01/94	
			.0307			✓			01/01/94	
			.0310			✓			01/01/94	
			.0313			✓			01/01/94	
			.0402 - .0406			✓			01/01/94	
	2H		.0103			✓			01/01/94	
	4C		.1201			✓			01/01/94	
			.1203			✓			01/01/94	
			.1205			✓			01/01/94	
	4F		.0501			✓			01/01/94	
10	NCAC	3R	.0214	✓			✓		01/04/94	
			.0304		✓				01/04/94	
			.0305		✓		✓		01/04/94	
			.0309		✓				01/04/94	
			.0321	✓					01/04/94	
			.1202			✓			01/04/94	
			.1204 - .1209			✓			01/04/94	
			.1213	✓					01/04/94	
			.1214 - .1215	✓			✓		01/04/94	
			.1216	✓					01/04/94	
			.1217	✓			✓		01/04/94	
			.1218 - .1219	✓					01/04/94	
			.1402			✓			01/04/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3R	.1404 - .1409			✓			01/04/94	
			.1413 - .1414	✓			✓		01/04/94	
			.1415 - .1416	✓					01/04/94	
			.1417	✓					01/04/94	
			.1418	✓					01/04/94	
			.1419	✓			✓		01/04/94	
			.1713		✓		✓		01/04/94	
			.1714		✓				01/04/94	
			.1715		✓		✓		01/04/94	
			.1716			✓			01/04/94	
			.1717		✓		✓		01/04/94	
			.1718 - .1719		✓				01/04/94	
			.1720	✓			✓		01/04/94	
			.1902			✓			01/04/94	
			.1904 - .1908			✓			01/04/94	
			.1912 - .1914	✓					01/04/94	
			.1915	✓			✓		01/04/94	
			.1916	✓					01/04/94	
			.1917	✓			✓		01/04/94	
			.1918	✓					01/04/94	
			.2113		✓				01/04/94	
			.2114		✓		✓		01/04/94	
			.2115 - .2116		✓				01/04/94	
			.2117		✓		✓		01/04/94	
			.2118 - .2119		✓				01/04/94	
			.2120	✓					01/04/94	
			.2702 - .2707			✓			01/04/94	
			.2710 - .2711			✓			01/04/94	
			.3001		✓				12/31/93	180 DAYS
			.3020		✓				12/31/93	180 DAYS
			.3030		✓				12/31/93	180 DAYS
			.3032		✓				12/31/93	180 DAYS
			.3040		✓				12/31/93	180 DAYS



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3R	.3050		✓				12/31/93	180 DAYS
			.3101	✓					01/04/94	
			.3102	✓			✓		01/04/94	
			.3103	✓					01/04/94	
			.3104	✓			✓		01/04/94	
			.3105 - .3106	✓					01/04/94	
			.3107	✓			✓		01/04/94	
			.3108	✓					01/04/94	
			.3201 - .3204	✓					01/04/94	
			.3205	✓			✓		01/04/94	
			.3206	✓					01/04/94	
			.3207	✓			✓		01/04/94	
			.3401 - .3404	✓					01/04/94	
			.3405	✓			✓		01/04/94	
			.3406	✓					01/04/94	
			.3407	✓			✓		01/04/94	
			.3501 - .3504	✓					01/04/94	
			.3505	✓			✓		01/04/94	
			.3506	✓					01/04/94	
			.3507	✓			✓		01/04/94	
			.3601 - .3605	✓					01/04/94	
			.3606	✓			✓		01/04/94	
			.3607	✓					01/04/94	
			.3701 - .3707	✓					01/04/94	
			.3801	✓					01/04/94	
			.3802	✓			✓		01/04/94	
			.3803 - .3804	✓					01/04/94	
			.3805 - .3807	✓			✓		01/04/94	
			.3901 - .3905	✓					01/04/94	
			.3906	✓			✓		01/04/94	
			.3907	✓					01/04/94	
			.3908	✓			✓		01/04/94	
			.4001	✓					01/04/94	

*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	3R	.4002	✓			✓		01/04/94	
			.4003	✓					01/04/94	
			.4004	✓			✓		01/04/94	
			.4005	✓					01/04/94	
			.4006 - .4007	✓			✓		01/04/94	
			.4008	✓					01/04/94	
			.4009	✓			✓		01/04/94	
			.4010 - .4011	✓					01/04/94	
			.4012	✓			✓		01/04/94	
			.4101 - .4103	✓			✓		01/04/94	
			.4104	✓					01/04/94	
			.4105	✓			✓		01/04/94	
			.4106 - .4107	✓					01/04/94	
	14A		.1301 - .1313			✓			01/04/94	
			.1315 - .1317			✓			01/04/94	
	14J		.0206		✓		✓		01/04/94	
	14K		.0342		✓		✓		01/01/94	
	14L		.0602		✓				01/04/94	
	14M		.0709		✓		✓		01/01/94	
			.0715 - .0716		✓				01/01/94	
	14U		.0101 - .0102	✓					01/04/94	
			.0103	✓			✓		01/04/94	
			.0201 - .0205	✓					01/04/94	
			.0301	✓					01/04/94	
			.0302	✓			✓		01/04/94	
			.0303 - .0305	✓					01/04/94	
			.0401 - .0403	✓					01/04/94	
			.0501 - .0510	✓					01/04/94	
			.0601 - .0602	✓					01/04/94	
			.0603	✓			✓		01/04/94	
			.0604	✓					01/04/94	
			.0701 - .0702	✓					01/04/94	
			.0703	✓			✓		01/04/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
10	NCAC	14U	.0704 - .0706	✓					01/04/94	
			.0801 - .0805	✓					01/04/94	
			.0901 - .0903	✓					01/04/94	
			.0904	✓			✓		01/04/94	
			.0905 - .0907	✓					01/04/94	
			.0908	✓			✓		01/04/94	
			.1001 - .1002	✓					01/04/94	
			.1003 - .1004	✓			✓		01/04/94	
			.1101 - .1103	✓					01/04/94	
			.1104	✓			✓		01/04/94	
			.1105	✓					01/04/94	
			.1201 - .1202	✓					01/04/94	
			.1203	✓			✓		01/04/94	
			.1204 - .1207	✓					01/04/94	
			.1301 - .1303	✓					01/04/94	
			.1401 - .1402	✓					01/04/94	
			.1501	✓					01/04/94	
			.1601 - .1603	✓					01/04/94	
		18D	.0209		✓				01/01/94	
		18Q	.0520		✓				01/01/94	
			.0540 - .0541		✓				01/01/94	
		26H	.0202		✓				12/01/93	
			.0509	✓			✓		01/01/94	
		42C	.3503		✓				01/04/94	
		42W	.0001		✓				12/01/93	
			.0002		✓		✓		12/01/93	
		45G	.0104		✓		✓		01/01/94	
		45H	.0202 - .0203		✓				01/01/94	
11	NCAC	8	.0905		✓				01/04/94	
		11B	.0611		✓		✓		01/01/94	
		11C	.0133	✓					01/21/94	180 DAYS
11	NCAC	11F	.0000							
11	NCAC	11F	.0100						01/01/94	



*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
11	NCAC	11F	.0201 - .0206	✓					01/21/94	
			.0207	✓					01/01/94	
			.0208	✓					01/21/94	
		11H	.0011	✓			✓		01/01/94	
		12	.0560	✓					01/01/94	
			.0712	✓					01/01/94	
			.0713	✓			✓		01/01/94	
			.1004		✓				12/01/93	
			.1022	✓					12/01/93	
			.1401 - .1403	✓					01/01/94	
			.1404	✓			✓		01/01/94	
		13	.0318 - .0319		✓		✓		12/01/93	
		15	.0012	✓					01/01/94	
		16	.0302		✓		✓		01/01/94	
			.0401 - .0403	✓			✓		01/01/94	
			.0501 - .0504	✓			✓		01/01/94	
12	NCAC	1	.0106	✓			✓		01/01/94	
		7D	.0102		✓				12/01/93	
			.0203		✓		✓		01/04/94	
			.0301 - .0302		✓		✓		01/04/94	
			.0401		✓		✓		01/04/94	
			.0402		✓				01/04/94	
		10B	.0103		✓				01/01/94	
			.0105		✓		✓		01/01/94	
			.0201		✓				01/01/94	
			.0204 - .0205		✓		✓		01/01/94	
			.0301		✓				01/01/94	
			.0305		✓				01/01/94	
			.0402 - .0403		✓				01/01/94	
			.0406		✓				01/01/94	
			.0408 - .0409		✓				01/01/94	
			.0503		✓				01/01/94	
			.0505		✓				01/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
12	NCAC	10B	.0602		✓				01/01/94	
			.0606		✓				01/01/94	
			.0704		✓				01/01/94	
			.0901		✓				01/01/94	
			.0902			✓			01/01/94	
			.0904		✓				01/01/94	
			.0906		✓				01/01/94	
			.0909		✓				01/01/94	
			.1003		✓		✓		01/01/94	
			.1005		✓				01/01/94	
			.1205		✓				01/01/94	
			.2104		✓				01/01/94	
		11	.0102		✓				12/01/93	
13	NCAC	7F	.0101		✓				12/31/93	
			.0201		✓				12/31/93	
			.0501		✓				12/31/93	
15A	NCAC	2D	.0518		✓		✓		12/01/93	
			.0531 - .0532		✓		✓		12/01/93	
			.0901		✓				12/01/93	
			.0902		✓		✓		07/01/94	
			.0907		✓		✓		07/01/94	
			.0910		✓		✓		07/01/94	
			.0911		✓		✓		07/01/94	
			.0936		✓		✓		12/01/93	
			.0947 - .0948	✓			✓		07/01/94	
			.0949 - .0951	✓					07/01/94	
			.0952	✓			✓		07/01/94	
			.1201		✓		✓		12/01/93	
			.1202		✓				12/01/93	
			.1204		✓				12/01/93	
			.1206		✓				12/01/93	
			.1209		✓				12/01/93	
		2H	.0601		✓				12/01/93	

*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	2H	.0603		✓				12/01/93	
		5B	.0003		✓		✓		01/01/94	
		6F	.0001 - .0005	✓					12/09/93	180 DAYS
		7H	.0304		✓				12/01/93	
			.2002	✓			✓		01/01/94	
			.2004	✓			✓		01/01/94	
		10B	.0105					✓		
			.0117		✓		✓		12/01/93	
		10C	.0215	✓					12/01/93	
			.0404		✓				07/01/93	
			.0407		✓				12/01/93	180 DAYS
		10F	.0339		✓				12/01/93	
			.0365	✓					12/01/93	
		10H	.0109		✓		✓		12/01/93	
		13B	.1701 - .1703	✓					01/04/94	
			.1704 - .1705	✓			✓		01/04/94	
			.1706 - .1707	✓					01/04/94	
			.1708	✓			✓		01/04/94	
			.1709	✓					01/04/94	
			.1710	✓			✓		01/04/94	
		18A	.0201 - .0230			✓			01/04/94	
			.0301		✓		✓		01/04/94	
			.0420		✓		✓		05/01/94	
			.0425		✓				01/04/94	
			.0427		✓		✓		05/01/94	
			.2601		✓		✓		01/04/94	
			.2638 - .2639		✓		✓		01/04/94	
		19A	.0206		✓		✓		01/04/94	
			.0401		✓		✓		01/01/94	
			.0406	✓					01/04/94	
			.0502		✓		✓		01/04/94	
		19B	.0101		✓				01/04/94	
			.0503		✓				01/04/94	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A	NCAC	19C	.0102		✓				01/04/94	
			.0701 - .0703	✓			✓		01/04/94	
		20A	.0006		✓		✓		01/01/94	
		21A	.0816 - .0818		✓		✓		01/04/94	
		21B	.0304		✓		✓		01/04/94	
		24A	.0202		✓				01/04/94	
			.0302		✓				01/04/94	
17	NCAC	1A	.0001		✓				01/01/94	
			.0002 - .0005			✓			01/01/94	
		1B	.0001 - .0002			✓			01/01/94	
		1C	.0101 - .0104					✓		
			.0201		✓				01/01/94	
			.0204			✓			01/01/94	
			.0206			✓			01/01/94	
			.0301		✓				01/01/94	
			.0302 - .0303			✓			01/01/94	
			.0306			✓			01/01/94	
			.0308		✓				01/01/94	
			.0312			✓			01/01/94	
			.0313 - .0314		✓				01/01/94	
			.0316		✓				01/01/94	
			.0318 - .0319		✓				01/01/94	
			.0320					✓		
			.0321			✓			01/01/94	
			.0322		✓				01/01/94	
			.0323			✓			01/01/94	
			.0402			✓			01/01/94	
		2A	.0001 - .0005			✓			01/01/94	
		2B	.0001 - .0003			✓			01/01/94	
		2C	.0001 - .0003			✓			01/01/94	
		2D	.0001 - .0003			✓			01/01/94	
		2E	.0001 - .0003			✓			01/01/94	
		5B	.0105		✓				01/01/94	

*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	5B	.0107		✓				01/01/94	
			.0403		✓				01/01/94	
			.0503		✓				01/01/94	
			.0603		✓				01/01/94	
			.0803		✓				01/01/94	
			.0903		✓				01/01/94	
			.1104 - .1105		✓				01/01/94	
			.1108		✓				01/01/94	
			.1110		✓				01/01/94	
			.1302 - .1304		✓				01/01/94	
			.1306		✓				01/01/94	
			.1309		✓				01/01/94	
			.1402		✓				01/01/94	
			.1502		✓				01/01/94	
			.1703		✓				01/01/94	
	5C		.0101 - .0103		✓				01/01/94	
			.0304		✓				01/01/94	
			.0405 - .0406		✓				01/01/94	
			.0604 - .0605		✓				01/01/94	
			.0701 - .0704		✓				01/01/94	
			.0801		✓				01/01/94	
			.0804 - .0805		✓				01/01/94	
			.0903		✓				01/01/94	
			.0907 - .0908		✓				01/01/94	
			.1001		✓				01/01/94	
			.1003		✓				01/01/94	
			.1006		✓				01/01/94	
			.1401		✓				01/01/94	
			.1507		✓				01/01/94	
			.1702		✓				01/01/94	
			.1801 - .1803		✓				01/01/94	
			.2004		✓				01/01/94	
			.2101 - .2102		✓				01/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
17	NCAC	5C	.2401		✓				01/01/94	
			.2402			✓			01/01/94	
			.2403		✓				01/01/94	
19A	NCAC	1A	.0405			✓			12/29/93	
		2B	.0201			✓			12/29/93	
			.0317		✓				12/29/93	
			.0505			✓			12/29/93	
			.0514			✓			12/29/93	
			.0602 - .0603		✓				12/29/93	
		2C	.0101 - .0106		✓				12/29/93	
			.0107			✓			12/29/93	
			.0108		✓				12/29/93	
			.0110 - .0112		✓				12/29/93	
			.0114 - .0115		✓				12/29/93	
			.0201 - .0205		✓				12/29/93	
			.0206 - .0207			✓			12/29/93	
			.0208		✓				12/29/93	
			.0209 - .0211			✓			12/29/93	
			.0212 - .0213		✓				12/29/93	
		2D	.0406		✓				12/29/93	
			.0602		✓		✓		12/29/93	
			.0607		✓		✓		12/29/93	
			.0801		✓				12/29/93	
		2E	.0607			✓			12/29/93	
			.0702		✓				12/29/93	
		3B	.0101					✓		
			.0103					✓		
			.0119					✓		
			.0602					✓		
			.0614					✓		
			.0620 - .0621		✓				01/01/94	
		3C	.0223		✓				01/01/94	
			.0404					✓		



*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	3C	.0435					✓		
			.0436		✓				01/01/94	
		3D	.0101 - .0102		✓				01/01/94	
			.0215 - .0219		✓				01/01/94	
			.0221		✓				01/01/94	
			.0223 - .0224		✓				01/01/94	
			.0226 - .0229		✓				01/01/94	
			.0231		✓				01/01/94	
			.0301 - .0302					✓		
			.0401		✓				01/01/94	
			.0402 - .0405					✓		
			.0601 - .0602		✓				01/01/94	
			.0604					✓		
			.0701		✓				01/01/94	
			.0702			✓			01/01/94	
			.0703		✓				01/01/94	
			.0802 - .0804		✓				01/01/94	
			.0807 - .0809		✓				01/01/94	
			.0814 - .0817		✓				01/01/94	
			.0818					✓		
			.0819 - .0825		✓				01/01/94	
			.0826					✓		
			.0901 - .0902		✓				01/01/94	
		3F	.0101					✓		
			.0201 - .0203					✓		
		3G	.0205		✓				01/01/94	
			.0402					✓		
			.0601					✓		
		3H	.0207 - .0208		✓				01/01/94	
			.0211					✓		
			.0302 - .0303		✓				01/01/94	
			.0401 - .0404		✓				01/01/94	
		3I	.0505			✓			01/01/94	

**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
19A	NCAC	3J	.0101 - .0102		✓				01/01/94	
			.0201 - .0202		✓				01/01/94	
			.0208			✓			01/01/94	
			.0303		✓				01/01/94	
			.0305 - .0308		✓				01/01/94	
			.0401		✓				01/01/94	
			.0505 - .0506			✓			01/01/94	
			.0508		✓				01/01/94	
			.0601		✓				01/01/94	
			.0604 - .0605		✓				01/01/94	
			.0701		✓				01/01/94	
			.0703		✓				01/01/94	
			.0801 - .0803		✓				01/01/94	
			.0902		✓				01/01/94	
			.0905			✓			01/01/94	
			.0907		✓				01/01/94	
5A			.0002					✓		
5C			.0101 - .0103			✓			12/29/93	
			.0201 - .0204			✓			12/29/93	
			.0301 - .0304			✓			12/29/93	
			.0401 - .0402			✓			12/29/93	
			.0502 - .0503		✓				12/29/93	
			.0601 - .0603		✓				12/29/93	
			.0701		✓				12/29/93	
			.0703		✓				12/29/93	
20	NCAC	2N	.0100					✓		
			.0206 - .0209		✓				12/01/93	
			.0212 - .0213		✓				12/01/93	
			.0214					✓		
			.0215 - .0219		✓				12/01/93	
21	NCAC	14I	.0105		✓				12/01/93	
		14N	.0114		✓		✓		12/01/93	
		16B	.0304		✓		✓		01/04/94	

*LIST OF RULES CODIFIED*

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21	NCAC	16C	.0203		✓		✓		01/04/94	
			.0304		✓		✓		01/04/94	
		16D	.0101		✓				01/04/94	
			.0102		✓		✓		01/04/94	
		16H	.0104		✓		✓		01/01/94	
			.0203		✓		✓		01/01/94	
			.0205		✓		✓		01/01/94	
		16Q	.0204		✓				01/01/94	
			.0301		✓		✓		01/01/94	
			.0303		✓				01/01/94	
			.0403		✓				01/01/94	
		19	.0101		✓				12/01/93	
		19	.0604	✓			✓		12/01/93	
			.0613	✓			✓		12/01/93	
		34A	.0101		✓				12/01/93	
			.0201		✓				12/01/93	
		40	.0101		✓				01/01/94	
			.0112		✓		✓		01/01/94	
			.0202		✓		✓		01/01/94	
			.0314		✓				01/01/94	
		54	.1605		✓		✓		12/01/93	
			.1609	✓					12/01/93	180 DAYS
			.2007	✓					12/01/93	180 DAYS
		60	.0101			✓			12/01/93	
			.0102		✓				12/01/93	
			.0207		✓		✓		12/01/93	
			.0210	✓					12/01/93	
			.0312 - .0314	✓					12/01/93	
			.1102 - .1103		✓		✓		12/01/93	
		65	.0001 - .0003	✓			✓		01/01/94	
			.0005 - .0006	✓			✓		01/01/94	
			.0007	✓			✓		01/01/95	
			.0008	✓			✓		01/01/94	



**LIST OF RULES CODIFIED**

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
25	NCAC	1D	.0301		✓		✓		12/01/93	
			.0308		✓		✓		12/01/93	
			.2401 - .2404	✓			✓		12/01/93	
	1E		.0205		✓		✓		12/01/93	
			.0209		✓		✓		12/01/93	
			.0301		✓		✓		12/01/93	
			.0314		✓				12/01/93	
			.0706		✓				12/01/93	
			.0707 - .0710		✓		✓		12/01/93	
			.1102		✓		✓		12/01/93	
			.1105		✓		✓		12/01/93	
			.1110		✓		✓		12/01/93	
			.1306		✓				12/01/93	
			.1402 - .1404		✓		✓		12/01/93	
			.1405 - .1406		✓				12/01/93	
			.1408		✓		✓		12/01/93	
			.1501 - .1503	✓			✓		01/04/94	
			.1504	✓					01/04/94	
			.1505 - .1506	✓			✓		01/04/94	

***The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).***

## **ADMINISTRATION**

### **State Employees Combined Campaign**

*1 NCAC 35 .0103 - Organization of the Campaign  
Agency Revised Rule*

*RRC Objection 11/18/93  
Obj. Removed 11/18/93*

## **AGRICULTURE**

### **Aquaculture**

*2 NCAC 53 .0001 - Aquaculture Licenses*

*RRC Objection 12/16/93*

## **COMMERCE**

### **Banking Commission**

*4 NCAC 3F .0202 - Permissible Investments*

*RRC Objection 12/16/93*

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Coastal Management**

*15A NCAC 7H .2002 - Approval Procedures  
Agency Responded  
No Action  
Agency Revised Rule*

*RRC Objection 09/17/93  
Obj. Cont'd 10/21/93  
Obj. Cont'd 11/18/93  
Obj. Removed 12/16/93*

*15A NCAC 7H .2004 - General Conditions  
Agency Responded  
No Action  
Agency Revised Rule*

*RRC Objection 09/17/93  
Obj. Cont'd 10/21/93  
Obj. Cont'd 11/18/93  
Obj. Removed 12/16/93*

### **Environmental Management**

*15A NCAC 2D .0518 - Msc Volatile Organic Compound Emissions  
Agency Revised Rule*

*RRC Objection 11/18/93  
Obj. Removed 11/18/93*

*15A NCAC 2D .0948 - VOC Emissions from Transfer Operations  
Agency Revised Rule*

*RRC Objection 11/18/93  
Obj. Removed 11/18/93*

*15A NCAC 2L .0103 - Policy  
Agency Revised Rule  
Rule Returned to Agency  
Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection 09/17/93  
RRC Objection 09/17/93  
Obj. Cont'd 10/21/93  
Eff. 11/04/93*

### **Health: Epidemiology**

*15A NCAC 19A .0206 - Infection Control - Health Care Settings  
Agency Revised Rule*

*RRC Objection 12/16/93  
Obj. Removed 12/16/93*

<i>15A NCAC 19C .0703 - Method of Reporting</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**Health: Personal Health**

<i>15A NCAC 21A .0817 - Grant Proposals</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**Laboratory Services**

<i>15A NCAC 20A .0006 - Fees</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**Mining: Mineral Resources**

<i>15A NCAC 5B .0003 - Procedures for Obtaining Permits: Bonding Reqs.</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**Solid Waste Management**

<i>15A NCAC 13B .1705 - Design, Constr./Operation/Structural Fill Facilities</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>15A NCAC 13B .1708 - Other Uses for Coal Combustion By-products</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>15A NCAC 13B .1710 - Annual Reporting</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**HUMAN RESOURCES****Facility Services**

<i>10 NCAC 3R .2114 - Information Required of Applicant</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3405 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3505 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>10 NCAC 3R .3906 - Required Staffing and Staff Training</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

**Mental Health: General**

<i>10 NCAC 14A .1603 recodified as 14U .0303 - Registered Nurse</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .1903 recodified as 14U .0603 - Space Requirements</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2204 recodified as 14U .0904 - Treatment or Habilitation Plan</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2208 recodified as 14U .0908 - Rel Planning/Res/Inpatient Svcs</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2304 recodified as 14U .1004 - Testing Services</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14A .2404 recodified as 14U .1104 - Invol Admin/Psychotropic Med</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/18/93</i>
<i>10 NCAC 14J .0206 - Procedures: Seclusion, Restraints, or Isolation Time Out</i>	<i>RRC Objection</i>	<i>12/16/93</i>

*Agency Revised Rule*

*Obj. Removed 12/16/93*

## **INSURANCE**

### **Financial Evaluation Division**

*11 NCAC 11B .0611 - Deposits: Bonds: Excess Insurance - Groups*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

*11 NCAC 11H .0011 - Insolvency or Hazardous Financial Condition*  
*Agency Revised Rule*  
*Agency Revised Rule*

*RRC Objection 11/18/93*

*Obj. Cont'd 11/18/93*

*Obj. Removed 12/16/93*

### **Special Services Division**

*11 NCAC 13 .0318 - Request for Cancellation Notice*  
*Agency Revised Rule*

*RRC Objection 11/18/93*

*Obj. Removed 11/18/93*

## **JUSTICE**

### **Departmental Rules**

*12 NCAC 1 .0106 - ADA Dispute Resolution Procedure*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

### **Private Protective Services**

*12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions*  
*No Response from Agency*

*RRC Objection 11/18/93*

*Obj. Cont'd 12/16/93*

*12 NCAC 7D .0203 - Renewal or Re-issue of Licenses and Trainee Permits*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

*12 NCAC 7D .0401 - Experience Reqs. a Private Investigator License*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

### **Sheriffs' Education and Training Standards Commission**

*12 NCAC 10B .1003 - Basic Law Enforcement Certificate*  
*Agency Revised Rule*

*RRC Objection 11/18/93*

*Obj. Removed 11/18/93*

## **LICENSING BOARDS AND COMMISSIONS**

### **Dental Examiners**

*21 NCAC 16D .0102 - Restrictions on Practice*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

*21 NCAC 16H .0203 - Permitted Functions of Dental Assistant II*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

*21 NCAC 16Q .0301 - Sedation Credentials and Permit*  
*Agency Revised Rule*

*RRC Objection 12/16/93*

*Obj. Removed 12/16/93*

### **Electrolysis Examiners**

*21 NCAC 19 .0604 - Program Directors*  
*Agency Revised Rule*

*RRC Objection 10/21/93*

*Obj. Removed 11/18/93*

*21 NCAC 19 .0613 - Student/Teacher Ratio and Equipment*  
*Agency Revised Rule*

*RRC Objection 10/21/93*

*Obj. Removed 11/18/93*



**Opticians**

21 NCAC 40 .0202 - <i>Registration of Place of Business</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	12/16/93 12/16/93
21 NCAC 40 .0314 - <i>Apprenticeship and Internship Requirements: Registration</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	12/16/93 12/16/93

**Practicing Psychologists**

21 NCAC 54 .1605 - <i>Fees</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
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**Refrigeration Examiners**

21 NCAC 60 .0101 - <i>Structure of Board</i> <i>Agency Repealed Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
21 NCAC 60 .0207 - <i>Requirements for Examination Applicants</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93

**Therapeutic Recreation**

21 NCAC 65 .0005 ( <i>Recodified as 21 NCAC 65 .0002</i> )- <i>Meetings</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	12/16/93 12/16/93
21 NCAC 65 .0008 ( <i>Recodified as 21 NCAC 65 .0004</i> ) - <i>Academic -TRS Exam.</i>	RRC Objection	12/16/93
21 NCAC 65 .0011 ( <i>Recodified as 21 NCAC 65 .0007</i> ) - <i>Cert. Ren. Eff. 7/1/95</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	12/16/93 12/16/93
21 NCAC 65 .0013 ( <i>Recodified as 21 NCAC 65 .0008</i> ) - <i>Revocation</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	12/16/93 12/16/93

**STATE PERSONNEL**

**Office of State Personnel**

25 NCAC 1D .0308 - <i>Salary Increases</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
25 NCAC 1E .0301 - <i>Sick Leave Credits</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
25 NCAC 1E .1102 - <i>Maximum Amount</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
25 NCAC 1E .1105 - <i>Retention of Benefits</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93

**TRANSPORTATION**

**Deputy Secretary - Transit, Rail, and Aviation**

19A NCAC 6C .0112 - <i>Allowable Project Costs</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
19A NCAC 6C .0128 - <i>State Aid to Airports Program Guidance Handbook</i> <i>Agency Repealed Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93

**Director of Administration**

19A NCAC 5B .0101 - <i>Fiscal Section Operations</i> <i>Agency Revised Rule</i>	RRC Objection Obj. Removed	11/18/93 11/18/93
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**Division of Highways**

19A NCAC 2C .0102 - Minimum Standards for Secondary Roads	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0103 - Addition of Roads to the Secondary Road System	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0204 - Utility Requirements for Subdivision Roads	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0206 - Bridge and Dam Requirements for Subdivision Roads	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 2C .0211 - Street Intersections for Subdivision Streets	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 2C .0213 - Subdivision Name Markers	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2D .0502 - Ticket Conditions	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 2D .0801 - Pre-Qualifying to Bid: Requalification	RRC Objection	09/17/93
No Response from Agency	Obj. Cont'd	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 2D .0802 - Invitation to Bid	RRC Objection	09/17/93
No Response from Agency	Obj. Cont'd	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 2D .0803 - Advertisement and Invitations for Bids	RRC Objection	09/17/93
No Response from Agency	Obj. Cont'd	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 2D .0821 - Return of Bid Bond or Bid Deposit	RRC Objection	09/17/93
No Response from Agency	Obj. Cont'd	10/21/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 2E .0606 - Exceptions to the Policy	RRC Objection	11/18/93
Agency Repealed Rule	Obj. Removed	11/18/93

**Division of Motor Vehicles**

19A NCAC 3B .0616 - Approval: Com School: Community College Instructors	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert.	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3C .0223 - Registration: Motor Homes: Etc.		11/18/93
Rule Returned to Agency for Failure to Comply with APA		
19A NCAC 3C .0436 - Highway Use Tax	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3C .0521 - Taxicab	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	11/18/93
19A NCAC 3D .0231 - Hearings Pursuant to Articles 12 & 15 of Chapter 20	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0515 - Safety Inspection Licensing and Procedures	RRC Objection	12/16/93
19A NCAC 3D .0602 - Collection of Assessments	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0702 - Information for Manufacturer	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 3D .0823 - Vehicle Registration and Identification Required	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0825 - Reproduction of Forms	RRC Objection	12/16/93

## *RRC OBJECTIONS*

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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3G .0205 - Issuing of Original Certificate</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3I .0505 - Confidentiality</i>	<i>RRC Objection</i>	<i>11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3J .0202 - Original Application</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>
<i>19A NCAC 3J .0604 - Contract Provisions</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/16/93</i>

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**10 NCAC 26I .0101 - PURPOSE: SCOPE AND NOTICE OF CHANGE IN LEVEL OF CARE**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

**10 NCAC 26I .0102 - REQUEST FOR RECONSIDERATION AND RECIPIENT APPEALS**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0102 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

**10 NCAC 26I .0104 - FORMAL APPEALS**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0104 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).



*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
1MS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
Travel, Incorporated v. Administration	93 DOA 0362	Nesnow	11/08/93	
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Azzat Aly Amer	92 ABC 1149	Reilly	09/01/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isacc Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
Alcoholic Beverage Control Comm. v. Billy Fincher McSwain Jr.	93 ABC 0239	Gray	08/26/93	
Jean Hoggard Askev v. Alcoholic Beverage Control Commission	93 ABC 0255	West	09/10/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James Elwood Alphin	93 ABC 0326	Gray	08/26/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
Alcoholic Beverage Control Comm. v. Sydner Jan Mulder	93 ABC 0354	Morgan	11/10/93	8:17 NCR 1712
Barbara Locklear v. Alcoholic Beverage Control Commission	93 ABC 0395	West	09/14/93	
Alcoholic Beverage Control Comm. v. Partnership, T/A Hawk's Landing	93 ABC 0407	Becton	10/18/93	
Alcoholic Beverage Control Com. v. Thomas Andrew Reid	93 ABC 0408	Gray	11/01/93	
Zachary Andre Jones v. Alcoholic Beverage Control Commission	93 ABC 0421	West	09/13/93	
Alcoholic Beverage Control Comm. v. Mack Ray Chapman	93 ABC 0423	Gray	09/17/93	
Alcoholic Beverage Control Comm. v. Bistro Enterprises, Inc.	93 ABC 0430	Reilly	10/07/93	
Alcoholic Beverage Control Comm. v. Richard Donald James Jr.	93 ABC 0431	Nesnow	09/01/93	
Alcoholic Beverage Control Comm. v. George Oliver O'Neal III	93 ABC 0433	Morgan	11/01/93	8:16 NCR 1553
Alcoholic Beverage Control Comm. v. The Sideline of Wilmington, Inc.	93 ABC 0462	Becton	10/27/93	
William Vernon Fraaklin & Gene Carroll Daniels v. ABC Commission	93 ABC 0570	Reilly	09/17/93	
Pink Bell v. ABC Commission	93 ABC 0595	Morgan	12/20/93	
Alcoholic Beverage Control Comm. v. Joseph Adu	93 ABC 0601	Nesnow	10/28/93	8:16 NCR 1560
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0611	West	10/12/93	
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0613	West	10/11/93	
Alcoholic Beverage Control Comm. v. Mohammad Salim Pirini	93 ABC 0616	West	10/13/93	
Linda R. Cunningham v. Alcoholic Beverage Control Commission	93 ABC 0633	Morrison	11/03/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Beverage Control Comm. v. Katherine Mary Dufresne	93 ABC 0667	Reilly	12/13/93	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Alcoholic Beverage Control Comm. v. Jerome Hill T/A Corner Pocket	93 ABC 0672	Gray	11/23/93	
Venus L. Smith v. Alcoholic Beverage Control Commission	93 ABC 0701	Becton	12/08/93	
Alcoholic Beverage Control Comm. v. Partnership t/a RJ's Store	93 ABC 0860	Mann	09/29/93	
Alcoholic Beverage Control Comm. v. Ervin Ray Winstead	93 ABC 0890	Chess	12/30/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
<b>COMMERCE</b>				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Steven A. Barner v. Crime Victims Compensation Comm.	92 CPS 0453	Nesnow	06/01/93	
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
Isabelle Hyman v. Crime Victims Compensation Comm.	92 CPS 1807	Morrison	05/24/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Norman E. Brown v. Victims Compensation Commission	93 CPS 0141	West	07/07/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
David & Jane Spano v. Crime Control & Public Safety	93 CPS 0160	Nesnow	07/30/93	8:10 NCR 862
Phillip Edward Moore v. Crime Control & Public Safety	93 CPS 0169	Nesnow	05/20/93	
Norma Jean Purkett v. Crime Victims Compensation Comm.	93 CPS 0205	West	08/27/93	8:12 NCR 1171
Sheila Carter v. Crime Control and Public Safety	93 CPS 0249	Morgan	08/25/93	
John Willie Leach v. Crime Victims Compensation Comm.	93 CPS 0263	Morrison	05/20/93	
Nellie R. Mangum v. Crime Victims Compensation Comm.	93 CPS 0303	Morrison	06/08/93	
Constance Brown v. Crime Victims Compensation Comm.	93 CPS 0351	Reilly	05/24/93	
Susan Coy v. Crime Victims Compensation Commission	93 CPS 0623	Reilly	09/22/93	
Mark A. McCrimmon v. Crime Victims Compensation Comm.	93 CPS 0652	Becton	12/20/93	8:20 NCR 2016
Rendall K. Rothrock v. Crime Victims Compensation Comm.	93 CPS 0821	West	12/28/93	
John Pressley Moore v. Crime Victims Compensation Comm.	93 CPS 1405	Morrison	12/29/93	
<b>EMPLOYMENT SECURITY COMMISSION</b>				
William H. Peace III v. Employment Security Commission	91 EEO 0536	Chess	10/12/93	8:19 NCR 1914
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
J. Bruce Mulligan v. Environment, Health, & Natural Resources	91 EHR 0773	West	07/13/93	
Calvin Blythe Davis & George Thomas Davis v. EHR	91 EHR 0794	Morrison	12/02/93	
Michael D. Barnes v. Onslow Cty Hlth & Environment and EHR	91 EHR 0825	Morgan	06/21/93	
William E. Finck v. Environment, Health, & Natural Resources	92 EHR 0040	Gray	06/14/93	
Uitley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Dora Mae Blount on behalf of Joseph T. Midgette v. Hyde Cty Bd/Commissioners, Hyde Cty Bd/Health, & Environment, Health, & Natural Resources	92 EHR 0400	Gray	10/15/93	
Thomas G. McHugh v. DEHNR	92 EHR 0742	Becton	12/28/93	
A.J. Ballard Jr., Tire & Oil Co., Inc. v. Env., Health, & Nat. Res.	92 EHR 0754	Nesnow	08/30/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
White Oak Chapter of the Izaak Walton League, Inc., and National Parks and Conservation Association, Inc. v. Division of Solid Waste Management, EHR and Haywood County	92 EHR 0881	West	09/14/93	
Southchem, Inc. v. Environment, Health, & Natural Resources	92 EHR 0925	Chess	11/08/93	
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHR	92 EHR 1140	Gray	04/13/93	
W.E. Moulton & Wife, Evelyn Moulton v. Macon County Health Dept.	92 EHR 1144	Morgan	11/15/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1201 <sup>ad1</sup>	Reilly	08/12/93	
Service Oil Company v. Environment, Health, & Natural Resources	92 EHR 1205	Reilly	05/27/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1224 <sup>ad1</sup>	Reilly	08/12/93	
Residents of Camm & Shell v. Health Environmental - Septic Tank Div.	92 EHR 1462	Morrison	08/25/93	
City of Salisbury v. Environment, Health, & Natural Resources	92 EHR 1472	Morrison	04/22/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Standard Specialty Contractors, Inc. v. EHR	92 EHR 1660	Reilly	05/21/93	

\* Consolidated cases.

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALL</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Shawqi A. Jaber v. Environment, Health, & Natural Resources	92 EHR 1784	Becton	07/07/93	
McLeod Leather & Belting Co., Inc. v. Env., Health, & Natural Res.	93 EHR 0003	Morgan	10/11/93	8:15 NCR 1503
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Rayco Utilities, Inc. v. Environment, Health, & Natural Resources	93 EHR 0063	Morrison	09/17/93	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	06/21/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
A.J. Holt v. Public Water Supply Section, Div. of Environmental Health	93 EHR 0168	West	10/25/93	
Charlie Garfield McPherson Swine Farm v. Env., Health, & Nat. Res.	93 EHR 0181	Reilly	07/23/93	8:10 NCR 870
Keith Cutler, Kathryn Cutler v. Environment, Health, & Natural Res.	93 EHR 0185	Morrison	10/20/93	
Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County	93 EHR 0206	Nesnow	05/20/93	
R.L. Stowe Mills, Inc. v. Environment, Health, & Natural Resources	93 EHR 0219	Morrison	08/11/93	8:11 NCR 996
O.C. Stafford/Larry Haney v. Montgomery Cty. Health Dept.	93 EHR 0224	Gray	06/07/93	
Patricia Y. Marshall v. Montgomery Cty Health Dept. & EHR	93 EHR 0252	Gray	10/22/93	
Fred M. Grooms v. Environment, Health, & Natural Resources	93 EHR 0276	West	08/27/93	8:12 NCR 1176
Bobby Anderson v. Environment, Health, & Natural Resources	93 EHR 0299	Reilly	06/07/93	
Shell Bros. Dist., Inc. v. Environment, Health, & Natural Resources	93 EHR 0308	Becton	05/18/93	
Fred C. Gosnell & wife, Patricia T. Gosnell v. Env., Health, & Nat. Res.	93 EHR 0340	Becton	08/11/93	
Holding Bros., Inc. v. Environment, Health, & Natural Resources	93 EHR 0380	Nesnow	08/03/93	8:11 NCR 1001
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0466 <sup>*12</sup>	Reilly	11/30/93	
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0467 <sup>*12</sup>	Reilly	11/30/93	
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	
Tim Whitfield v. Environment, Health, & Natural Resources	93 EHR 0520	Gray	12/16/93	
Tony Worrell v. Environment, Health, & Natural Resources	93 EHR 0587	Morgan	11/08/93	
L. Terry Fuqua v. Environment, Health, & Natural Resources	93 EHR 0624	Reilly	11/08/93	
Seth B. Gaskill Jr. v. N.C. Coastal Resources Commission	93 EHR 0635	Nesnow	11/18/93	
Richard L. Goodman v. Environment, Health, & Natural Resources	93 EHR 0783	Reilly	11/24/93	
Monroe Gaskill v. DEHNR-Div. of Coastal Management	93 EHR 0802	Chess	10/13/93	
Larry Clifton, Southwind Dev., Co. v. Div. of Environmental Mgmt.	93 EHR 0848	Becton	10/20/93	
Blue Ridge Env. Defense League, Inc. v. Env., Health, & Natrl Res	93 EHR 0862	Nesnow	10/11/93	
Charles Watson v. DEHNR	93 EHR 0981	West	12/20/93	
Heatercraft Inc. v. Environment, Health, & Natural Resources	93 EHR 1021	Morrison	12/20/93	

## HUMAN RELATIONS COMMISSION

Human Relations Comm. on behalf of Tyrone Clark v. Myrtle Wilson	92 HRC 0560	Becton	09/07/93	8:13 NCR 1287
Human Relations Comm. on behalf of Marsha Crisco v. Hayden Morrison	93 HRC 0167	Reilly	08/18/93	8:12 NCR 1168

## HUMAN RESOURCES

O.C. Williams v. Human Resources	91 CSE 0036 <sup>*2</sup>	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
Dennis K. King v. Human Resources	91 CSE 1122	Morgan	07/28/93	
Cathy Harris, A/K/A Cathy D. Grubb v. Human Resources	91 CSE 1131	Morgan	08/24/93	
Raymond L. Griffin v. Human Resources	91 CSE 1148	Morgan	08/24/93	
O.C. Williams v. Human Resources	91 CSE 1158 <sup>*2</sup>	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
Randy Chambliss v. Human Resources	91 CSE 1187	Morgan	04/28/93	
Melvin White v. Human Resources	91 CSE 1192	Morgan	05/17/93	
Joseph R. Kavaliauskas Jr. v. Human Resources	91 CSE 1204	Morgan	07/29/93	
Larry D. Boyd v. Human Resources	91 CSE 1214	Morgan	08/24/93	
Jefferson D. Boylen v. Human Resources	91 CSE 1217	Morgan	05/17/93	
Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
Jerry L. Summers v. Human Resources	91 CSE 1234	Morgan	07/28/93	
Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	
Gregory L. Washington v. Human Resources	92 CSE 0075	Morgan	04/01/93	
Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
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Connie F. Epps, Otis Junior Epps v. Human Resources	92 CSE 1182	Reilly	07/22/93	
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Eugene Johnson v. Human Resources	92 CSE 1229	Nesnow	11/16/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
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Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Gus W. Long Jr. v. Human Resources	92 CSE 1263	Gray	08/16/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
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Eyron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
Elijah G. Deanes v. Human Resources	92 CSE 1273	Nesnow	11/17/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Charles W. Stall Jr. v. Human Resources	92 CSE 1313	Mann	07/06/93	
William A. Wilson III v. Human Resources	92 CSE 1315	Reilly	12/07/93	
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Clayton L. Littleton v. Human Resources	92 CSE 1317	Morrison	09/02/93	
Frank E. Johnson v. Human Resources	92 CSE 1326	Reilly	08/16/93	
David Rollins v. Human Resources	92 CSE 1334	Morrison	05/06/93	
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Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
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Joe B. Reece v. Human Resources	92 CSE 1355	Mann	10/12/93	
Michael Anthony Dean v. Human Resources	92 CSE 1356	Morrison	08/13/93	
Gregory W. Alford v. Human Resources	92 CSE 1358	Gray	10/18/93	
Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
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Jesse B. Williams v. Human Resources	92 CSE 1389	Nesnow	10/12/93	
Johnny Victor Debity v. Human Resources	92 CSE 1393	Mann	11/15/93	
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Floyd Excell Stafford v. Human Resources	92 CSE 1412	Reilly	08/31/93	
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Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
Rene Thomas Rittenhouse v. Human Resources	92 CSE 1421	Nesnow	04/20/93	
Thomas Edward Williamson v. Human Resources	92 CSE 1422	Reilly	04/20/93	
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
Lynwood McClinton v. Human Resources	92 CSE 1424	Reilly	09/15/93	
Timothy Scott Long v. Human Resources	92 CSE 1445	Becton	06/29/93	
Kenneth Lamar Massey v. Human Resources	92 CSE 1447	Reilly	12/07/93	
David W. Williams v. Human Resources	92 CSE 1448	Nesnow	07/19/93	
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Kenneth Wayne Wiggins v. Human Resources	92 CSE 1458	Gray	12/13/93	
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Gary Lewis Doster v. Human Resources	92 CSE 1461	Morrison	10/21/93	
Raymond L. Head v. Human Resources	92 CSE 1510	Mann	11/18/93	
Mark R. Charles v. Human Resources	92 CSE 1511	Becton	11/17/93	
Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
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James T. Carter Jr. v. Human Resources	92 CSE 1517	Mann	08/31/93	
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Timothy R. Currence v. Human Resources	92 CSE 1523	Reilly	09/09/93	
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Jarvis N. Price v. Human Resources	92 CSE 1531	Morrison	05/12/93	
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Lee Richard Jones v. Human Resources	92 CSE 1541	Reilly	09/08/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
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Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	



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Kevin Keith Witmore v. Human Resources	92 CSE 1566	Reilly	11/01/93	
George A. Rinell v. Human Resources	92 CSE 1569	Gray	12/09/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
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Harvey H. Boyd v. Human Resources	92 CSE 1574	Reilly	12/09/93	
Kit C. Elmore v. Human Resources	92 CSE 1575	Gray	07/16/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Philip S. Piercy v. Human Resources	92 CSE 1577	Gray	07/16/93	
Anthony McLaughlin v. Human Resources	92 CSE 1582	Gray	06/29/93	
Johnny W. Cooke v. Human Resources	92 CSE 1585	Becton	05/11/93	
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Barbara A. Chaperon v. Human Resources	92 CSE 1593	Mann	10/13/93	
Kenneth Eugene Johnson v. Human Resources	92 CSE 1594	Reilly	11/01/93	
Derrick Carter v. Human Resources	92 CSE 1595	Gray	11/17/93	
Charles Wayne Pierce v. Human Resources	92 CSE 1596	Morrison	07/14/93	
Gregory L. Verney v. Human Resources	92 CSE 1610	Gray	11/09/93	
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Henry L. Taylor v. Human Resources	92 CSE 1624	Mann	09/15/93	
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Jeffery D. Williams v. Human Resources	92 CSE 1626	Mann	05/19/93	
Ronald Sowell v. Human Resources	92 CSE 1627	Reilly	07/19/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
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Linda D. McDonald v. Human Resources	92 CSE 1639	Gray	10/19/93	
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Milton Kendricks v. Human Resources	92 CSE 1647	Gray	12/07/93	
Joe K. Martin v. Human Resources	92 CSE 1650	Reilly	09/10/93	
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Larry Thompson v. Human Resources	92 CSE 1655	Reilly	07/22/93	
Billie J. Smith v. Human Resources	92 CSE 1656	Gray	07/23/93	
Patrick Floyd v. Human Resources	92 CSE 1663	Reilly	05/20/93	
James Eric Frost v. Human Resources	92 CSE 1669	Mann	11/18/93	
Dennis W. Nolan v. Human Resources	92 CSE 1670	Morrison	06/25/93	
Eric L. Garland v. Human Resources	92 CSE 1671	Mann	07/22/93	
Ira Alston Jr. v. Human Resources	92 CSE 1703	Becton	06/16/93	
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Antonio M. Townsend v. Human Resources	92 CSE 1721	Chess	08/30/93	
Kevin J. Close v. Human Resources	92 CSE 1727	Chess	08/30/93	
Norman Gatewood v. Human Resources	92 CSE 1728	Chess	10/22/93	
Thadius Bonapart v. Human Resources	92 CSE 1740	Chess	09/21/93	
Ronald Norman v. Human Resources	92 CSE 1746	Chess	10/14/93	
Joseph Eric Lewis v. Human Resources	92 CSE 1748	Becton	08/02/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
Tamera S. Hatfield v. Human Resources	92 CSE 1772	Chess	08/30/93	
Michael Wayne Bryant v. Human Resources	92 CSE 1773	Chess	10/22/93	
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Charles E. Whiteley v. Human Resources	93 CSE 0183	Becton	11/10/93	
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Anthony Watson v. Human Resources	93 CSE 0396	Nesnow	08/04/93	
Eugene Polk v. Human Resources	93 CSE 0437	Chess	08/11/93	
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Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
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Ora Lee Brinkley v. David T. Flaherty, Secretary of Human Resources	92 DHR 0608	Chess	08/27/93	
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Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb- Lohavichan Rentals	92 DHR 1109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb- Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
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Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
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Brithhaven, Inc. v. Human Resources & Valdese Nursing Home, Inc.	92 DHR 1785	Gray	09/17/93	
Samuel Benson v. Office of Admn. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
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Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
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Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
Jessie Campbell & Hazel Campbell v. Human Resources	93 DHR 0521	Becton	01/13/94	
A.C., by & through her agent & personal rep. Hank Neal v. Human Res.	93 DHR 0529	Nesnow	12/06/93	8:19 NCR 1926
Venola Hall, Agape Day Care v. Human Resources	93 DHR 0535	Mann	10/22/93	
Warren Cty NC Lucious Hawkins v. Human Resources, C. Robin Britt	93 DHR 0540	Gray	12/06/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
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Sandra Gail Wilson v. Child Abuse/Neglect, Div. of Child Development	93 DHR 0782	Nesnow	09/09/93	
Thomas M. Moss v. Human Resources	93 DHR 0864	Chess	11/05/93	
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<b>INSURANCE</b>				
Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees// St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp. Comp. Major Medical Plan	92 INS 1791	Reilly	08/19/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
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Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*7	West	06/22/93	
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Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0829*7	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*9	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
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Richard Zander Frink v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
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Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
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Noel B. Rice v. Criminal Justice Ed. & Training Standards Comm.	93 DOJ 0174	Morrison	12/13/93	
Lonnie Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
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Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds Comm	93 DOJ 0377	Reilly	08/31/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
William M. Medlin v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0569	Chess	10/06/93	
Karl L. Halsey Sr. v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0625	Gray	12/01/93	
Charles Freeman v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0685	Nesnow	12/06/93	
Shayne K. MacKinnon v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0686	Nesnow	12/16/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300
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Private Protective Services Board v. Michael A. McDonald	93 DOJ 0975	Gray	11/29/93	
Levon Braswell v. Private Protective Services Board	93 DOJ 1003	Morrison	12/29/93	8:20 NCR 2020
Thomas H. Groton v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 1116	Becton	01/06/94	
Dale Alvin Floyd v. Private Protective Services Board	93 DOJ 1472	Morrison	12/30/93	
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Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
<b>PUBLIC INSTRUCTION</b>				
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Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 062S	Mann	07/29/93	
Donna Marie Snyder v. Public Instruction	93 EDC 0731	Nesnow	09/16/93	
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**v.**

**DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES,  
Respondent.**

### RECOMMENDED DECISION

Mr. Alan McSurely represented the petitioner. Mr. John Barkley represented the respondent. The petitioner presented three witnesses and introduced Exhibits #1 - 22. The respondent presented four witnesses and introduced Exhibits #1, 2, 5, 6, 7 and 8. Proposed Findings of Fact were filed on January 7, 1994. Respondent's Argument was filed on January 10, 1994.

1. Was the petitioner dismissed for just cause?
2. Did procedural irregularities invalidate the petitioner's dismissal?
3. Did the respondent dismiss petitioner because of his age?
4. Was the petitioner's dismissal the result of retaliation?

1. The petitioner was continuously employed by the respondent from February, 1970 to March, 1993. He received regular and steady pay increases and rose to senior analyst in the Office of Chief Medical Examiner of the Division of Postmortem Medicolegal Examination at Chapel Hill.
2. The petitioner's job involved examining small samples of human tissue and blood to determine the type and quantity of chemicals and drugs in deceased human beings.
3. At the time of his dismissal on March 9, 1993, the petitioner was 49 years of age and earned about \$50,000 per year.
4. The petitioner was replaced by a man in his "twenties" who made less than \$30,000 per year.
5. During the morning of February 25, 1993, James Kantor, a junior chemist, tried to engage petitioner in a conversation about a lamp. The petitioner said he "didn't want to talk with" Mr. Kantor.
6. Mr. Kantor lost his temper and said "I'm sorry you don't want to talk with me. Your loss." Mr. Kantor raised his voice. The petitioner was working and continued to work.

7. Later that day, the petitioner discovered a problem in the log book. The problem was not new. Mr. Kantor had filled in a space in the log book which both analysts used for retention times. Mr. Kantor had been asked before by his supervisors not to fill in that space.
8. The petitioner crossed the hall to the room where Mr. Kantor was working and asked him not to put retention times in the log book. Mr. Kantor said that he did not understand.
9. Mr. Kantor said "tell me exactly what you want in the log." The petitioner said "it's very simple, don't use these retention times, it's not useful to me."
10. The petitioner, frustrated that he was unable to make Mr. Kantor understand, said "this conversation is over" and turned to leave. Mr. Kantor said something as the petitioner was leaving and the petitioner replied, "Cut the bullshit, Jim."
11. Mr. Kantor said "I'll shit on you, Barry."
12. The petitioner turned around and went back into the room. Mr. Kantor and the petitioner started toward each other and bumped into each other. Neither had their hands raised.
13. Both men had lost control for a moment. Neither intended to assault or hurt the other. The petitioner had previously lost control of himself and had threatened Mr. Kantor. Mr. Kantor also had difficulty controlling himself. He had used offensive language to a female co-worker. The contact between the men was neither accidental nor premeditated but was the result of their poor relationship and lack of control. After their physical contact, the men realized what had happened and talked to each other in order to defuse the situation.
14. The petitioner left the room. He met his supervisor, Dr. Ng, and mentioned the incident to him.
15. Dr. Ng had previously talked with Mr. Kantor about putting too much data in the log book.
16. Mr. Kantor also met Dr. Ng and told him about the incident. Mr. Kantor, unlike the petitioner, appeared very upset. Dr. Ng took him to see Mr. Michael A. Olson, the Administrator of the Office.
17. Mr. Kantor wrote out a statement that afternoon which described the incident. However, this statement was not preserved by the respondent. It could not be produced at the hearing.
18. The next morning, Mr. Olson told Mr. Kantor that he had difficulty reading his handwritten statement and that the statement contained extraneous material. Mr. Olson told Mr. Kantor to dictate another statement to him.
19. Mr. Olson did not attempt to obtain a contemporaneous statement from the petitioner about the incident.
20. The second statement prepared the morning after the incident (R Exh #1) contained words like "lunged" and "hit me frontally with his shoulders and forearms."
21. This statement and notes of an interview with Mr. Kantor on March 5, 1993, are similar. In the notes, Mr. Kantor said that he "didn't understand what Barry had said;" that he "raised [his] voice, may have cussed, doesn't remember;" that the petitioner started out the door and Mr. Kantor "made a comment;" that the petitioner walked back very fast about 12 feet and "knocked" him with his chest and shoulders; that he called out Dr. Ng's name and tried to resume the conversation; that Dr. Ng came by and Mr. Kantor heard the petitioner tell Dr. Ng that Kantor was "like a root canal to him;" and that it was after this that Mr. Kantor got Dr. Ng and said we need to go upstairs.
22. The various versions of Mr. Kantor's testimony about the incident on February 25, 1993, diminish



his credibility. Mr. Olson's request for Mr. Kantor to prepare another statement because of perceived deficiencies in the first statement, the unexplained disappearance of that contemporaneous handwritten description of the incident and Mr. Olson's failure to obtain a contemporaneous statement from the petitioner undermine the impartiality of his investigation and his testimony. Mr. Olson also excluded Dr. Ng, petitioner's supervisor, from the investigation. Dr. Ng and the petitioner had a good relationship. Mr. Olson decided from the beginning that the petitioner was the guilty party.

23. The petitioner was dismissed by Memorandum dated March 9, 1993, from Dr. John Butts, Chief Medical Examiner. Dr. Butts considered the petitioner's past conduct in determining his credibility. The memorandum stated that the petitioner was dismissed "for hitting (pushing) a State employee while on duty at about 2:30 PM, Thursday, February 25, 1993." The attachment to the memorandum further alleged that the petitioner "lunged at Mr. Kantor and hit (him) frontally with his shoulders and forearms." (See R Exh #1). At the pre-dismissal conference, the petitioner was shown a copy of the statement (R Exh. #1). The petitioner did not request assistance of counsel at the conference.
24. The petitioner had, prior to this incident, criticized the handling of important arsenic testing in a celebrated murder trial in 1989.
25. In November, 1992, the petitioner was contacted by Mr. Sam Kiser, the brother of Blanche Taylor Moore. Thereafter, the petitioner discussed the arsenic testing with Mr. Kiser.
26. The petitioner's dismissal was based on Dr. Butts' understanding of the February 25, 1993, incident as investigated by Mr. Olson and not on criticisms made by the petitioner concerning the arsenic testing or on the age of the petitioner.

#### CONCLUSIONS OF LAW

1. The petitioner was a permanent State employee subject to the State Personnel Act at the time of his dismissal.
2. The evidence presented at the hearing does not establish by a preponderance of the evidence that the petitioner hit or pushed or "lunged at Mr. Kantor and hit (him) frontally with his shoulders and forearms" as alleged in the dismissal document, dated March 9, 1993, and the attachment thereto (R Exh #1). Therefore, the respondent lacked just cause to dismiss the petitioner for unacceptable personal conduct.
3. Although the respondent lacked just cause, it did follow proper procedures in dismissing the petitioner.
4. The respondent did not dismiss the petitioner because of his age in violation of GS 126-36.
5. The petitioner's dismissal was not the result of retaliation prohibited by GS Chapter 126, Article 14.

#### RECOMMENDED DECISION

It is recommended that the petitioner be reinstated with back pay and awarded reasonable attorney fees.

#### ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the State Personnel Commission. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by GS 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 13th day of January, 1994.

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Robert Roosevelt Reilly, Jr.  
Administrative Law Judge

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

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